

**CHAPTER 230****(HB 525)**

AN ACT relating to development of science, technology, and business.

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

Section 1. KRS 68.180 is amended to read as follows:

- (1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, shall be imposed at a percentage rate or rates not to exceed one and one-fourth percent (1.25%) of (a) salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county, and (b) the net profits of businesses, trades, professions, or occupations from activities conducted in the county. License fees imposed for regulatory purposes shall not be subject to such limitations as to form and amount. No public service company that pays an ad valorem tax shall be required to pay a license tax, and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, ***or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor***, or in other cases where the county is prohibited by law from imposing a license tax.
- (2) The provisions and limitations of subsection (1) shall not apply to the license fees authorized by KRS 160.482 to 160.488.

Section 2. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.

In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:

1. For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
2. For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.

Licenses imposed for regulatory purposes are not subject to such limitations as to form and amount. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license tax.

- (2) No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, *or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.*
- (3) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee.
- (4) The provisions of subsection (3) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee.
- (5) On July 14, 2000, the provisions of subsection (4) of this section notwithstanding, city license fees not credited against county license fees enacted under this section or KRS 67.083 as of January 1, 2000, shall not be credited against county license fees. However, this exception shall not apply to county license fees enacted for the first time, or increased, on or after January 1, 2000. This provision shall expire July 15, 2002, unless otherwise extended by the General Assembly.
- (6) A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).

Section 3. KRS 91.200 is amended to read as follows:

- (1) The board of aldermen of every city of the first class, in addition to levying ad valorem taxes, may by ordinance impose license fees on franchises, provide for licensing any

business, trade, occupation, or profession and the using, holding, or exhibiting of any animal, article, or other thing. License fees on a business, trade, occupation, or profession for revenue purposes may be imposed at a percentage rate not to exceed those hereinafter set forth on (a) salaries, wages, commissions and other compensations earned by every person within the city for work done and services performed or rendered in the city (all of such being hereinafter collectively referred to as "wages"), and (b) the net profits of all businesses, professions, or occupations from activities conducted in the city (hereinafter collectively referred to as "net profits"). Licenses imposed for regulatory purposes shall not be subject to such limitations as to form and amount. No company that pays an ad valorem tax and a franchise tax is required to pay a license tax and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky national guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, ***or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor***, or in any other case where the city is prohibited by statute from imposing a license tax.

- (2) The rate fixed on both "wages" and "net profits" shall be one and one-fourth percent (1.25%).
- (3) License fees or taxes shall be collected by the commissioners of the sinking fund. The proceeds from the taxes shall be paid to the secretary and treasurer of the sinking fund until income from all sources of the sinking fund is sufficient to pay the cost of administration and the interest charges for the current fiscal year of the sinking fund in addition to a sum sufficient to amortize the outstanding principal indebtedness of the city on a yearly basis in accordance with regularly used amortization tables.
- (4) Revenue remaining after meeting the foregoing requirements shall be transferred to the city. Such revenues shall be credited to the general fund of the city as received and may be expended for general purposes or for capital improvements.
- (5) The term "capital improvements" as used in this section is limited to additions or improvements of a substantial and permanent nature and services rendered in connection therewith, and includes but is not limited to:
  - (a) The purchase of rights of way for highways, expressways, and the widening of existing streets;
  - (b) The purchase of lands for park, recreational, and other governmental facilities and for public off-street parking facilities;
  - (c) The purchase, construction, reconstruction, renovation, or remodeling of municipal buildings, and facilities;
  - (d) The replacement of machinery, wires, pipes, structural members or fixtures, and other essential portions of municipal buildings;
  - (e) The initial equipment of any newly acquired facility wherein any essential governmental function of the municipality may be located or carried on;

- (f) The purchase and installation of traffic control devices and fire alarm equipment;
  - (g) The reconstruction and resurfacing, but not routine maintenance, of streets and other public ways;
  - (h) The acquisition of motorized equipment purchased as additions to, but not replacements for, existing equipment; and
  - (i) Engineering and other costs incurred by the city in connection with the construction of public improvements financed under a special assessment plan.
- (6) Ad valorem taxes for the benefit of the sinking fund shall not be levied unless the income of the sinking fund is otherwise insufficient to meet such requirements.
  - (7) Licenses shall be issued and enforced on terms and conditions as prescribed by ordinance.

Section 4. KRS 92.281 is amended to read as follows:

- (1) Cities of all classes are authorized to levy and collect any and all taxes provided for in Section 181 of the Constitution of the Commonwealth of Kentucky, and to use the revenue therefrom for such purposes as may be provided by the legislative body of the city.
- (2) Nothing in this section shall be construed to repeal, amend, or affect in any way the provisions of KRS 243.070.
- (3) This section shall not in any wise repeal, amend, affect, or apply to any existing statute exempting property from local taxation or fixing a special rate on proper classification or imposing a state tax which is declared to be in lieu of all local taxation, nor shall it be construed to authorize a city to require any company that pays both an ad valorem tax and a franchise tax to pay a license tax.
- (4) This section shall also be subject to the provisions of KRS 91.200 in cities of the first class having a sinking fund and commissioners of a sinking fund.
- (5) License fees on businesses, trades, occupations, or professions may not be imposed by a city of the sixth class at a percentage rate on salaries, wages, commissions, or other compensation earned by persons for work done or services performed within said city of the sixth class nor the net profits of businesses, professions, or occupations from activities conducted in said city of the sixth class.
- (6) License fees or occupational taxes may not be imposed against or collected on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- (7) *License fees or occupational taxes may not be imposed against or collected on any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Construction of research facilities" means constructing, remodeling, and equipping facilities in this state or expanding existing facilities in this state for*

*qualified research and includes only tangible, depreciable property, and does not include any amounts paid or incurred for replacement property; and*

- (b) *"Qualified research" means qualified research as defined in Section 41 of the Internal Revenue Code.*
- (2) *A nonrefundable credit in the amount determined in subsection (3) of this section is permitted against the tax assessed in KRS 141.020 or 141.040 for the construction of research facilities. Any unused credit may be carried forward ten (10) years.*
- (3) *The credit allowed in subsection (2) of this section shall equal five percent (5%) of the qualified costs of construction of research facilities.*

Section 6. KRS 141.068 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Authority" means the Kentucky Economic Development Finance Authority as created pursuant to KRS 154.20-010;
- (b) "Investor" has the same meaning as set forth in *Section 17 of this Act*~~[KRS 154.20-253]~~;
- (c) "Investment fund" has the same meaning as set forth in *Section 17 of this Act*~~[KRS 154.20-253]~~;
- (d) "Investment fund manager" has the same meaning as set forth in *Section 17 of this Act*~~[KRS 154.20-253]~~; and
- (e) "Tax credit" means the credits provided for in *Section 20 of this Act*~~[KRS 154.20-263]~~.
- (2) (a) An investor which is an individual or a corporation shall be entitled to the credit certified by the authority under *Section 20 of this Act*~~[KRS 154.20-259(6)]~~ against the income tax due computed as provided by KRS 141.020 or 141.040, respectively.
- (b) The amount of the certified tax credit that may be claimed in any tax year of the investor shall be determined in accordance with the provisions of *Section 20 of this Act*~~[KRS 154.20-263]~~.
- (3) (a) In the case of an investor that is an S-corporation, partnership, limited partnership, limited liability company, or limited liability partnership, the amount of the tax credit certified by the authority under *Section 20 of this Act*~~[KRS 154.20-259(6)]~~ shall be apportioned among the shareholders, partners, or members thereof, as applicable, at the same ratio as the shareholders', partners', or members' distributive shares of income are determined for the tax year during which the amount of the credit is certified by the authority.
- (b) The amount of the tax credit apportioned to each shareholder, partner, or member that may be claimed in any tax year of the shareholder, partner, or member shall be determined in accordance with the provisions of *Section 20 of this Act*~~[KRS 154.20-263]~~.
- (4) (a) In the case of an investor that is a trust, the amount of the tax credit certified by the authority under *Section 20 of this Act*~~[KRS 154.20-259(6)]~~ shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the tax credit is certified by the authority.

- (b) The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of *Section 20 of this Act* ~~[KRS 154.20-263]~~.
- (5) The Revenue Cabinet shall promulgate administrative regulations under KRS Chapter 13A adopting forms and procedures for the reporting and administration of credits authorized by *Section 20 of this Act* ~~[KRS 154.20-263]~~.

Section 7. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
  - (b) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
  - (c) The health insurance credit permitted by KRS 141.062;
  - (d) The tax paid to other states credit permitted by KRS 141.070;
  - (e) The credit for hiring the unemployed permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 *in effect prior to the effective date of this Act and the credit permitted by Section 20 of this Act*;
  - (h) The low income credit permitted by KRS 141.066;
  - (i) The household and dependent care credit permitted by KRS 141.067; ~~and~~
  - (j) The coal incentive credit permitted under KRS 141.0405; *and*
  - (k) *The research facilities credit permitted under Section 5 of this Act.*
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350; and
  - (b) The individual estimated tax payment credit permitted by KRS 141.305.
- (3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
  - (b) The health insurance credit permitted by KRS 141.062;
  - (c) The unemployment credit permitted by KRS 141.065;
  - (d) The recycling or composting equipment credit permitted by KRS 141.390;

- (e) The coal conversion credit permitted by KRS 141.041;
  - (f) The enterprise zone credit permitted by KRS 154.45-090;
  - (g) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 *in effect prior to the effective date of this Act and the credit permitted by Section 20 of this Act*; ~~and~~
  - (h) The coal incentive credit permitted under KRS 141.0405; *and*
  - (i) *The research facilities credit permitted under Section 5 of this Act.*
- (4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

Section 8. KRS 141.206 is amended to read as follows:

- (1) Every partnership or S corporation owning property or engaging in business in Kentucky, shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its federal partnership return or S corporation return with the form prescribed and furnished by the cabinet.
- (2) Partnerships and S corporations shall determine taxable income in the same manner as in the case of an individual under KRS 141.010(9) to (11) and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of taxable income under this section and the computation of the partners or shareholders distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.
- (3) Individuals or corporations carrying on a business as a partnership or S corporation shall be liable for income tax only in their individual or corporate capacities, and no income tax shall be assessed upon the income of any partnership or S corporation except as prescribed in KRS 141.040(5).
  - (a) Resident and nonresident individuals who are partners or S corporation shareholders must report and pay tax on the distributive share of net income, gain, loss, deduction, or credit, as determined in subsection (2) of this section, except as provided in subsections (4) and (5) of this section. Partnerships and S corporations may be required to withhold Kentucky income tax on the distributive share under administrative regulations issued by the cabinet.
  - (b) Corporations which are partners must include their distributive share of net income, gain, loss, deduction or credit, as determined under subsection (2) of this section, except as provided in subsections (4) and (5) of this section.
- (4) Resident and nonresident individuals and corporations which are partners in a partnership or shareholders in an S corporation carrying on business only in Kentucky are taxable on all items of income gain, loss, deduction or credit determined under subsection (2) of this section and reported as their distributive share from the partnership or S corporation.
- (5) Nonresident individuals and corporations which are partners in a partnership or shareholders in an S corporation which does business within and without Kentucky are taxable on their

proportionate share of the distributive income passed through the partnership or S corporation attributable to business done in Kentucky.

- (a) Business done in Kentucky is determined by the ratio of gross receipts from sales to purchasers or customers in Kentucky or services performed in Kentucky to the total gross receipts from sales or service everywhere.
- (6) Resident partners, S corporation shareholders and corporations which are partners in a multistate partnership or shareholders in a multistate S corporation are taxable on one hundred percent (100%) of the distributive share of income, gains, losses, deductions or credits.
- (7) Resident individuals who are partners in a partnership or shareholders in an S corporation which does not carry on business in Kentucky are subject to tax under KRS 141.020 on federal net income, gain, deduction, loss or credit passed through the partnership or S corporation.
- (8) S corporation for purpose of this section means a corporation which has elected for federal tax purposes to be taxed as an S corporation. An election for federal tax purposes is a binding election for Kentucky tax purposes.
- (9) *Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection a "qualified investment partnership" means a partnership formed to hold only investments that produce income that would not be taxable to the nonresident individual if held or owned individually.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 9 to 12 of this Act, unless the context indicates otherwise:*

- (1) *"Affiliate" means an ICC identified as the headquarters for program activity in a region or subregion;*
- (2) *"Commissioner" means the commissioner of the Office for the New Economy established in KRS 154.12-278;*
- (3) *"ICC" means the Kentucky Innovation and Commercialization Center;*
- (4) *"Region" means a geographic area of Kentucky designated as having a unique innovation strategic plan by the Office for the New Economy; and*
- (5) *"Satellite" means an office of an affiliate in a region.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established the Kentucky Innovation and Commercialization Center Program within the Office for the New Economy. The goal of the ICC program is to create products, new companies, and value-added jobs in communities throughout the Commonwealth. Strategies to achieve this goal include:*
  - (a) *Increasing quality deal flow of technology-based firms in Kentucky;*
  - (b) *Increasing understanding of start-up process and investment practices; and*
  - (c) *Providing value-added services to the start-up and investment community.*
- (2) *The duties of the ICC program shall include but not be limited to:*



- (a) *Identifying and linking entrepreneurs, faculty, scientists, venture capitalists, and other key individuals from the business sector, universities, community and technical colleges, local leaders, and government for the creation and expansion of knowledge-based companies;*
- (b) *Establishing a uniform protocol for assembling and communicating project concepts and opportunities;*
- (c) *Supporting high-quality projects through the concept and development phases including services such as market research, prototype development, business plan and strategies development, grant and contract capabilities, and capital and management resource identification; and*
- (d) *Identifying, in the area of technology development, potential partners, strategic opportunities, training and educational needs, and issues that inhibit the growth of technology sectors and business clusters in the state.*

SECTION 11. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Innovation and Commercialization Centers are private-public partnerships, operating as a cohesive statewide infrastructure to support the implementation of key Kentucky Innovation Act initiatives.*
- (2) *The organization of the ICCs shall include a central statewide headquarters, six (6) affiliate centers, and a number of satellite offices.*
  - (a) *The central headquarters has primary responsibility for the following:*
    - 1. *Managing and administering the ICC Program;*
    - 2. *Establishing uniform program application, protocol, and operating guidelines when appropriate;*
    - 3. *Supporting the protocol by creating and funding centralized services to be distributed throughout the network; and*
    - 4. *Identifying those issues, opportunities, and challenges that have statewide implications.*
  - (b) *The regional affiliates are responsible for fulfilling the duties as set forth in Section 10 of this Act relating to the implementation of the region's innovation strategic plan and supporting the implementation of the Kentucky Innovation Act initiatives in the region or subregion;*
  - (c) *The satellites are responsible for generating technology business development in their assigned geographic area, acting as a bridge between individuals and businesses needing critical early state concept and development work and the affiliate centers that can provide this support.*

*The affiliates and satellites provide a valuable assurance for equal access to the Kentucky Innovation Act initiatives and funding, and provide an opportunity for full participation in rural and remote, as well as metropolitan, areas of the state.*

- (3) *The commissioner shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of Sections 9 to 12 of this Act.*

- (4) *The commissioner may, in effectuating the provisions of Sections 9 to 12 of this Act, contract with a science and technology organization as defined in Section 29 of this Act to administer and manage the ICC Program.*

SECTION 12. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other funding available for the implementation and operations of the ICC Program, a concept phase funding pool shall be created to assist individuals and businesses in the earliest stages of project feasibility and concept development.*
- (2) *The amount of the funds available for any one (1) project or project concept from the concept phase funding pool shall not exceed twenty-five thousand dollars (\$25,000).*
- (3) *The individual or business shall match any award for each project or project concept receiving funds from the concept phase pool.*

SECTION 13. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Science and Technology Corporation shall administer and manage the Kentucky Science and Engineering Foundation as a means to increase Kentucky's capacity to become a leader state in competitive research by attracting more research funding from all sources to the Commonwealth. The Kentucky Science and Engineering Foundation shall be modeled in part on the National Science Foundation and shall make its own investments in peer-reviewed science and engineering research, to accelerate the rate of research and development funds and work to increase the amount of federal and private sector funds for this work in Kentucky.*

Section 14. KRS 154.12-224 is amended to read as follows:

- (1) There is created in the Cabinet for Economic Development the Department of Financial Incentives. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The department shall coordinate all financial assistance, tax credit, and related programs available for business and industry.
- (2) The department shall include the following divisions, each of which shall be headed by a director appointed by the secretary pursuant to KRS 12.050:
- (a) The Grant Programs Division, which shall supervise and manage the Economic Development Bond Program, as set forth in KRS 154.12-100, and the Local Government Economic Development Program, as set forth in KRS 42.4588;
- (b) The Direct Loan Programs Division, which shall supervise and manage the Direct Loan Program of the Kentucky Economic Development Finance Authority, as set forth in 307 KAR 1:020, and the Small Business Loans Branch;
- (c) The Tax Incentive Programs Division, which shall supervise and manage the Kentucky Industrial Development Act Program, as set forth in KRS 154.28-010 et seq., the Kentucky Jobs Development Act Program, as set forth in KRS 154.24-010 et seq., the Kentucky Industrial Revitalization Act Program, as set forth in KRS 154.26-010 et seq., the Kentucky Rural Economic Development Act Program, as set forth in KRS 154.22-010 et seq., and the Kentucky Enterprise Zone Program, as set forth in KRS 154.45-001 et seq., which shall be attached to the division for administrative purposes; and

- (d) The Program Servicing Division, which shall perform auditing, monitoring, and compliance functions for the Grant Programs Division, the Direct Loan Programs Division, and the Tax Incentive Programs Division within the Department of Financial Incentives.
- (3) The department shall also include the following entities:
  - (a) The Kentucky investment fund, established by KRS 154.20-250 to 154.20-284, which shall be attached to the department for administrative purposes and staff support; and
  - (b) The Bluegrass State Skills Corporation, established by KRS 154.12-204 to 154.12-208, which shall be attached to the department.

Section 15. KRS 154.12-274 is amended to read as follows:

- (1) As used in this section, "cluster" shall have the same meaning as in KRS 164.6011.
- (2) It is the intention of the General Assembly to recognize that a strong manufacturing base for the economy of the Commonwealth requires not only modernization of the production process but also an increase in the number of products developed, so that through the creation of new product lines, additional value-added products, and new manufacturing methods the economy will grow and quality job opportunities will increase. The Cabinet for Economic Development shall support this intention through its authority in KRS 154.12-050 ~~and through its strategic technology capacity initiative in KRS 154.12-270~~.
- (3) The Cabinet for Economic Development shall enter into contracts or agreements with the Kentucky *Manufacturing Assistance Center*~~[Technology Service, Inc.]~~, a nonprofit organization with the mission to assist Kentucky small and medium-size manufacturers to become more competitive in the global marketplace. The contracts or agreements shall require the Kentucky *Manufacturing Assistance Center*~~[Technology Service, Inc.]~~, to undertake the following activities:
  - (a) Negotiate contractual agreements with existing manufacturers to deliver modernization services that are likely to lead to the creation of new product lines, additional value-added products, and new manufacturing methods;
  - (b) Deliver engineering, technical, and business improvement services in Kentucky manufacturing facilities, through the network of Kentucky Technology Service locations in the state, that lead to the development of new product lines, additional value-added products, and new manufacturing methods;
  - (c) Coordinate services for and support the activities of Kentucky manufacturers that need additional projects, activities, and expertise beyond those available through the Kentucky *Manufacturing Assistance Center*~~[Technology Service, Inc.]~~;
  - (d) Promote, along with other economic development entities, the development of supplier chains, the linkages among suppliers, and the growth of clusters within the Commonwealth; and
  - (e) Provide to the Cabinet for Economic Development and Kentucky Innovation Commission a report of the advances made in the manufacturing modernization projects initiated.

Section 16. KRS 154.12-278 is amended to read as follows:

- (1) As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in KRS 164.6011.
- (2) There is established the Office~~[of the Commissioner]~~ for the New Economy in the Cabinet for Economic Development. Notwithstanding KRS 154.10-050, the Governor shall nominate the commissioner *of the Office for the New Economy*, who shall be approved by the Kentucky Economic Development Partnership.
- (3) The duties of the Office~~[of the Commissioner]~~ for the New Economy shall include but not be limited to:
  - (a) ***Implement the Kentucky Innovation and Commercialization Center Program as set forth in Sections 9 to 12 of this Act***~~[Undertake a strategic technology capacity initiative under KRS 154.12-270];~~
  - (b) ***Monitor the return on investments and effectiveness of the Kentucky Innovation Act initiatives as set forth in the Strategic Plan for the New Economy as approved by the Kentucky Innovation Commission, January 7, 2002, or as revised, and report annually prior to November 1 to the Kentucky Innovation Commission, the Governor, and the General Assembly***~~[Develop a knowledge-based economy strategy to be presented to the Kentucky Economic Development Partnership and the Kentucky Innovation Commission in KRS 154.12-270];~~
  - (c) Oversee the modernization initiative in KRS 154.12-274;
  - (d) Assist the cabinet in the recruitment of research and development companies;
  - (e) Assist the cabinet in the attraction of high-technology research and development centers;
  - (f) Support growth and creation of knowledge-based, innovative companies;
  - (g) Build *the infrastructure for the new economy businesses* and promote networks of technology-driven clusters and research intensive industries;
  - (h) Administer the high-tech construction pool and the high-tech investment pool;~~[and]~~
  - (i) Recommend projects to the Kentucky Economic Development Finance Authority for funding through the high-tech construction pool and high-tech investment pool; **and**
  - (j) ***Review and approve the annual plan which details the annual allocation of funds from the Science and Technology Funding Program, prior to the Council on Postsecondary Education executing a contract with the science and technology organization to administer science and technology funding programs. As used in this paragraph, the Science and Technology Funding Program means the Kentucky Rural Innovation Program, the Kentucky Research and Development Voucher Program, the Kentucky Commercialization Program, The Regional Technology Corporations/Innovation and Commercialization Center Satellites, and the Experimental Program to Stimulate Competitive Research/Kentucky Science and Engineering Foundation.***
- (4) The high-tech construction pool shall be used for projects with a special emphasis on the creation of high-technology jobs and knowledge-based companies. The commissioner, in administering the high-tech construction pool, shall recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The commissioner shall recommend any designated amount of pool funds to be set aside for any

match requirements. Any funds used for matching purposes may include public and private funds.

- (5) The high-tech investment pool shall be used to build and promote~~[networks to]~~ technology-driven industries and research-intensive industries, as well as their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky. The commissioner, in administering the high-tech investment pool, shall be authorized to recommend funds to be used to support loans and grants, or to secure an equity *or related* position~~[in industrial networks]~~.
- (6) The Kentucky Economic Development Finance Authority shall assure in their approval of funding of projects that the highest priority is given to knowledge-based companies in fulfillment of the purposes and intentions of the purposes of this section.

SECTION 17. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

*As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:*

- (1) *"Affiliate" means any person or entity who directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity;*
- (2) *"Agreement" means an investment fund agreement entered into pursuant to subsection (5) of Section 18 of this Act by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;*
- (3) *"Amended application" means a document submitted by an investment fund manager, in a form acceptable to the authority and on behalf of an investment fund, for the purpose of increasing the aggregate amount of available tax credits;*
- (4) *"Applicant" means any person or entity who has not received approval from the authority as an investment fund manager, but who has submitted or will submit an application to the authority for approval as an investment fund manager;*
- (5) *"Authority" means the Kentucky Economic Development Finance Authority or its designee;*
- (6) *"Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;*
- (7) *"Committed cash contribution" means a legally binding agreement by an investor to make a cash contribution in an amount set forth in a written agreement between an investor and an investment fund;*
- (8) *"Commonwealth" means the Commonwealth of Kentucky;*
- (9) *"Credit" means a nonrefundable credit for investors against state tax liability allocated and granted by the authority pursuant to Section 20 of this Act for qualified investments made by approved investment funds;*
- (10) *"Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;*

- (11) *"Financial institution" means "financial institution" as defined in KRS 136.500(10) and includes savings and loan associations, savings banks, and similar institutions subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;*
- (12) *"Insurance company" means any insurance company subject to the taxes imposed by KRS 136.320, 136.330, or 304.3-270;*
- (13) *"Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is approved by the authority to make qualified investments pursuant to Section 19 of this Act;*
- (14) *"Investment fund manager" means any person or entity that has been approved by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all applicable federal and state regulations;*
- (15) *"Investor" means any person or entity, including financial institutions and insurance companies, that is subject to state tax liability and that makes a cash contribution or a committed cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of violating any of Kentucky's tax laws within the past ten (10) years;*
- (16) *"Nonprofit entity" means an investor that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1986, as amended;*
- (17) *"Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;*
- (18) *"Qualified investment" means an investment of money in a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that consideration. In consideration for the qualified investment, the investment fund shall receive an equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; and*
- (19) *"Small business" means any entity which at the time a qualified investment is made by an investment fund:*
  - (a) 1. *Has a net worth of five million dollars (\$5,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less; or*

2. *Is a knowledge-based business, as shall be prescribed by the commissioner of the Office for the New Economy, and has a net worth of ten million dollars (\$10,000,000) or less;*
- (b) *Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by an investment fund;*
- (c) *Has no more than one hundred (100) employees; and*
- (d) *Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.*

SECTION 18. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) *The total amount of tax credits available to any single investment fund shall not exceed, in aggregate, eight million dollars (\$8,000,000) for all investors and all taxable years. The total tax credits available for all investors in all investment funds shall not exceed forty million dollars (\$40,000,000).*
- (2) *A person or entity seeking to be approved as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to Section 19 of this Act, in addition to complying with applicable state and federal securities laws and regulations.*
- (3) *Prior to the granting of any tax credits to investors of an investment fund, the committed cash contributions to an investment fund shall be not less than five hundred thousand dollars (\$500,000).*
- (4) *An investment fund shall have no less than four (4) investors, and no investor or investment fund manager, including their immediate family members, as defined in subsection (7) of Section 29 of this Act, and affiliates may own or have a capital interest in more than forty percent (40%) of the investment fund's capitalization.*
- (5) *Subsequent to approval of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. The effective date of the agreement shall be the date of approval of the investment fund and the investment fund manager by the authority. If an investment fund manager fails to comply with any of the obligations of the agreement, the authority may, at its option, do any one (1) or more of the following:*
  - (a) *Suspend the availability of the credits;*
  - (b) *Pursue any remedy provided under the agreement, including termination of the agreement; or*
  - (c) *Pursue any other remedy at law to which it may be entitled.*
- (6) *Any investor shall be entitled to a tax credit as a result of its investment in an investment fund as provided in Section 20 of this Act.*
- (7) *Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using approved qualified investments, shall not exceed thirty percent (30%) of the committed cash*

*contributions to the investment fund. This restriction shall not apply to investments of money by the investment fund that are not qualified investments.*

- (8) *The provisions of this section shall not prohibit an investment fund from investing in a business that is not a small business, including a business that is located outside of the Commonwealth; however, such investments shall not be eligible for the tax credit set forth in Section 20 of this Act.*

SECTION 19. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) *The approval of investment funds and investment fund managers shall be made pursuant to an application to the authority submitted by a proposed fund manager on behalf of a proposed investment fund and shall include:*
- (a) *The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;*
  - (b) *The applicant's business plan, including the minimum and maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;*
  - (c) *The amount of credits the investment fund seeks for making qualified investments;*
  - (d) *The applicant fund manager's relevant experience and demonstrated ability to manage the proposed investment fund;*
  - (e) *The location and account number of a bank account that has been established for use by the investment fund;*
  - (f) *The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to the offering, in compliance with applicable state and federal securities laws and regulations;*
  - (g) *A representation that the investment fund and the investment fund manager are and shall remain in compliance with applicable state and federal securities regulations; and*
  - (h) *Any additional information the authority deems necessary.*
- (2) *The applicant shall include copies of the following documents as attachments to the application:*
- (a) *The disclosure documents used in connection with the offering and investment in the investment fund;*
  - (b) *The disclosure documents provided to each investor which state that:*
    - 1. *The investor has certain rights, responsibilities, and liabilities pursuant to KRS 154.20-250 to 154.20-284;*
    - 2. *The Commonwealth shall be immune from liability for any losses or damages investors, investment funds, or investment fund managers may incur pursuant to Section 26 of this Act;*



3. *No tax credit shall be available under the provision of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations and have been approved by the authority, and an agreement has been executed, and the terms of that agreement have been disclosed in writing to each investor; and*
4. *Investors shall lose all rights to any unused credits allocated to an investment fund that does not make a qualified investment within one (1) year of the date of the agreement with the authority or within any one (1) year period thereafter through the end of the term of the agreement.*

*An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an approved investment fund, shall disclose in advance and in writing to each potential investor those items described in this subsection in addition to any other items required by law or by agreement.*

- (3) *The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including, but not limited to, power to:*
  - (a) *Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;*
  - (b) *Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and*
  - (c) *Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.*

*Any payments made by an investment fund manager pursuant to this subsection may be passed on to the investment fund manager's investment fund.*

- (4) *An investment fund's stated purpose shall be primarily to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.*
- (5) *The criteria considered by the authority for the approval of investment fund managers and the maximum amount of credits allocated to the investors of an investment fund shall include, but not be limited to:*
  - (a) *Compliance by those persons with applicable state and federal securities laws and regulations;*
  - (b) *A review of the application;*
  - (c) *The investment strategy for the investment fund;*
  - (d) *The relevant experience of the applicant fund manager or, if the applicant fund manager is an entity, the applicant's management;*
  - (e) *The applicant's demonstrated ability to manage the investment fund; and*

- (f) *The amount of credits requested by the investment fund and the total amount of credits which may be granted to investors under Section 20 of this Act.*
- (6) *Following the making of a qualified investment, the investment fund manager shall within sixty (60) days file a disclosure form with the authority detailing the following information:*
- (a) *The name and address of the small business in which the qualified investment was made;*
  - (b) *The amount of the qualified investment; and*
  - (c) *The name, address, and Social Security number or employer identification number, as may be applicable, of each investor and the amount of credit allocated to each investor by virtue of the investor's proportional ownership interest in the qualified investment.*
- (7) *An investment fund manager and its affiliates may operate no more than three (3) separate investment funds pursuant to separate applications submitted to and approved by the authority, provided the investment fund manager is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.*
- (8) *An investment fund manager seeking to expand a previously approved investment fund shall submit to the authority an amended application in a form acceptable to the authority.*
- (9) *An investment fund shall lose all unused credits that are available to its investors if the investment fund does not make a qualified investment within one (1) year of the date of the agreement or within any one (1) year period thereafter through the end of the term of the agreement.*
- (10) *The contents of the information form required under subsections (1), (2), and (6) of this section shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under KRS 61.870 to 61.884.*
- (11) *The authority, in consultation with the Revenue Cabinet, may establish additional procedures and standards, as it deems necessary for the approval of investment funds and investment fund managers, and for the allocation and granting of investment tax credits by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.*

SECTION 20. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) *An investor shall be entitled to a nonrefundable credit equal to forty percent (40%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority. The aggregate tax credit available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to its investment fund. The credit may be applied against the income tax imposed by KRS 141.020 or 141.040, the corporation license tax imposed by KRS 136.070, the insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270, and the taxes on financial institutions imposed by KRS 136.300, 136.310, and 136.505.*
- (2) *The tax credit amount that may be claimed by an investor in any tax year shall not exceed fifty percent (50%) of the initial aggregate credit amount approved by the authority for*

*the investment fund which would be proportionally available to the investor. An investor may first claim the credit granted in subsection (1) of this section in the year following the year in which the credit is granted.*

- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section, exceeds the investor's combined tax liabilities against which the credit may be claimed for that year, the investor may carry the excess tax credit forward until the tax credit is used, but the carry-forward of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.*
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.*
- (5) The tax credits allowed by this section are not transferable, except that:*

  - (a) A nonprofit entity may transfer, for some or no consideration, any or all of the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Revenue Cabinet of:*

    - 1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;*
    - 2. The amount of credits transferred; and*
    - 3. Any additional information the authority or the Revenue Cabinet deems necessary.*
  - (b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.*
  - (c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.*
- (6) The tax credit amount that may be claimed by an investor shall reflect only the investor's participation in qualified investments properly reported to the authority by the investment fund manager. No tax credit authorized by this section shall become effective until the Revenue Cabinet receives notification from the authority that includes:*

  - (a) A statement that a qualified investment has been made that is in compliance with KRS 154.20-250 to 154.20-284 and all applicable regulations; and*
  - (b) A list of each investor in the investment fund that owns a portion of the small business in which a qualified investment has been made by virtue of an investment in the investment fund, and each investor's amount of credit granted to the investor for each qualified investment.*

*The authority shall, within sixty (60) days of approval of credits, notify the Revenue Cabinet of the information required pursuant to this subsection and notify each investor of the amount of credits granted to that investor, and the year the credits may first be claimed.*

- (7) After the date on which investors in an investment fund have cumulatively received an amount of credits equal to the amount of credits allocated to the investment fund by the authority, no investor shall receive additional credits by virtue of its investment in that investment fund unless the investment fund's allocation of credits is increased by the authority pursuant to an amended application.*
- (8) The maximum amount of credits to be authorized by the authority shall be three million dollars (\$3,000,000) for each of fiscal years 2002-03 and 2003-04.*

SECTION 21. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) To receive the credit provided by Section 20 of this Act, an investor shall claim the credit on the investor's annual state tax returns in the manner prescribed by the Revenue Cabinet.*
- (2) The contents of an investor's filings under subsection (1) of this section shall be treated by the authority and by the Revenue Cabinet as confidential and shall not be considered public records under the Kentucky Open Records Act, KRS 61.870 to 61.884.*

SECTION 22. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) An investment fund that violates the provisions of KRS 154.20-250 to 154.20-284 shall pay to the State Treasurer a penalty in an amount equal to the amount of all credits claimed by the investors when these credits are determined to be derived from unqualified investments, plus interest at the rate of two percent (2%) per month, compounded monthly, from the date the credits were taken. If the investment fund fails to pay the penalty and interest in full as required by the Revenue Cabinet, each investor shall be personally liable to the Revenue Cabinet for that investor's share of the unpaid penalty, which shall be determined by the amount of credits received and utilized by the investor and all applicable interest. Any payment of unpaid penalty by an investor shall be included with the investor's state tax return for the period in which the failure or violation occurred. The secretary of the Revenue Cabinet shall give notice in writing to the authority, the investment fund manager, and the investors of any penalties imposed. The secretary of the Revenue Cabinet may abate any imposed penalty upon written request, if the investment fund manager establishes reasonable cause for the failure to make qualified investments in small businesses under the provisions of KRS 154.20-250 to 154.20-284, or to otherwise comply with the provisions of KRS 154.20-250 to 154.20-284. The State Treasurer shall deposit any amounts received pursuant to this section in the Commonwealth's general fund.*
- (2) The administration of this section shall be the responsibility of the Revenue Cabinet.*

SECTION 23. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

- (1) Each investment fund manager shall file an annual report with the secretary of the Revenue Cabinet and with the authority, on or before February 15 of each year during*

*which it manages an investment fund. This report shall include information that the authority prescribes from time to time, including, but not limited to, the following:*

- (a) For each small business in which qualified investments are made by the investment fund during the reporting period, the name and address of the small business, the amount of qualified investments made by the investment fund, the job creation anticipated and achieved by the small business, and new products and technologies being developed by the small business;*
- (b) An affidavit prepared by the investment fund manager or, if the investment fund is an entity, by an authorized officer, partner, trustee, member, or manager of the investment fund management firm that states:*
  - 1. At the time of each qualified investment, each small business qualifies as a small business under the provisions of KRS 154.20-250 to 154.20-284;*
  - 2. The name and address of each investor, and the amount of cash contribution to the investment fund of each investor who is entitled to the credits; and*
  - 3. The continued compliance by the investment fund and the investment fund manager with all applicable state and federal securities laws and regulations.*
- (2) The authority shall provide an annual written status report to the standing Appropriations and Revenue Committee of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate, concerning the activities of the Kentucky investment fund for each fiscal year beginning with the fiscal year ended July 30, 2003. On or before November 1 of each year, the authority shall make an annual report for the preceding fiscal year to the Governor, the Legislative Research Commission, and the Kentucky Innovation Commission. The annual report shall include, but not be limited to, the following information:*
  - (a) The total number of investors and the aggregate amount of committed cash contributions to all investment funds, categorized by the types of business entities through which investors conduct business and the geographical distribution of investors, including the area development districts;*
  - (b) The total number and amounts of qualified investments made by each investment fund to qualified small businesses, categorized by type of businesses, amount of investment, job creation anticipated and achieved, geographical distribution, including area development districts, and new products and technologies developed; and*
  - (c) The total amount of credits granted to investors.*
- (3) The contents of the annual reports from investment fund managers to the authority described in subsection (1) of this section shall be treated by the authority as confidential, and shall not be considered a public record under the Kentucky Open Records Act, KRS 61.870 to 61.884.*
- (4) The authority may charge a fee in connection with the administration and processing of an annual report made by an investment fund manager.*

SECTION 24. A NEW SECTION OF KRS 154.20-250 TO 154.20-284 IS CREATED TO READ AS FOLLOWS:

*Any investment fund approved to make qualified investments pursuant to KRS 154.20-250 to 154.20-284 prior to July 1, 2002, unless otherwise approved by the authority, shall continue to operate and be granted credits pursuant to the agreement entered into and the rules, regulations, and procedures adopted by the authority prior to the effective date of this Act.*

Section 25. KRS 154.20-277 is amended to read as follows:

- (1) Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally-accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284~~[, including, but not limited to, those provisions requiring that qualified investments be made within certain time limits]~~. Each year the audit report shall be completed and certified by the independent certified public accountant and delivered to the~~[ secretary of the Revenue Cabinet and the]~~ authority within ninety (90) days after the end of the investment fund's fiscal year.
- (2) The authority and the Revenue Cabinet, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund~~[ or an investment fund manager, or if the investment fund manager is a person, an investment fund manager,]~~ regarding the affairs and business of the investment fund. The authority and the Revenue Cabinet, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Revenue Cabinet may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Revenue Cabinet may also audit, *for cause*, any small business in which an investment fund has made a qualified investment~~[, or in which an investment fund proposes to make a qualified investment, on a random basis or for cause]~~. Nothing in this section shall be construed to prohibit the Revenue Cabinet from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Revenue Cabinet determines to be appropriate.
- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Revenue Cabinet may consult with one another with respect to this noncompliance and the Revenue Cabinet may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- ~~(6) [The authority and the Revenue Cabinet may each charge a fee in connection with the administration and review of annual audits of investment funds under this section.]~~

(7)} Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Revenue Cabinet may or may not take with respect to the noncompliance.

Section 26. KRS 154.20-279 is amended to read as follows:

The Commonwealth, the authority, or any officer, director, official, employee, or agent of the Commonwealth or the authority shall not be liable to any investor, ~~or to any~~ investment fund, or ~~to any~~ investment fund manager as a result of KRS 154.20-250 to 154.20-284, or any of the activities authorized by KRS 154.20-250 to 154.20-284. This limitation of liability includes, without limitation:

- (1) Losses or damages investors incur in connection with any *committed or contributed* cash contributions made to an investment fund or any qualified investments made by an investment fund in small businesses; and
- (2) Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and expense of any kind or character relating to federal or state securities laws, rules, regulations, or orders.

Section 27. KRS 154.20-281 is amended to read as follows:

- (1) An investment fund may be dissolved or liquidated only after notice to ~~and approval of that dissolution or liquidation by~~ the authority in compliance with any applicable state or federal securities laws or regulations. ~~The authority may promulgate administrative regulations in accordance with KRS Chapter 13A to establish procedures for application for approval to dissolve or liquidate an investment fund.~~
- (2) This section shall not prohibit an investment fund from making distributions to investors in compliance with any applicable state or federal securities laws or regulations, if the investment fund is in compliance with the terms of KRS 154.20-250 to 154.20-284 ~~and if these distributions are not made in connection with the dissolution or liquidation of the investment fund or prohibited by KRS 154.20-257(4) or KRS 154.20-271(1).~~

Section 28. KRS 154.20-283 is amended to read as follows:

- (1) No qualified investments shall be made in a small business that is the "alter ego" of the investment fund or the investment fund manager. For purposes of this subsection, a business is an "alter ego" of an investment fund or an investment fund manager if any of the following criteria are satisfied:
  - (a) *Prior to an investment fund making a qualified investment in the small business*, the small business is owned in whole or in *an amount greater than twenty percent (20%) of the small business* ~~part~~ by an investor, officer, director, partner, member, manager, trustee or employee of the investment fund or the investment fund manager; *or*

- (b) The small business employs on a full-time or part-time basis an investor~~[, officer, director, partner, member, manager, trustee, or employee of the investment fund or the investment fund manager]; or~~
- (c) ~~An investor, officer, director, partner, member, manager, trustee, or employee of the investment fund or the investment fund manager has a direct or indirect financial interest in the small business, other than by virtue of the qualified investment made by the investment fund to the small business}.~~
- (2) ~~An~~~~[No investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or]~~ investment fund manager *may*~~[shall]~~ occupy any management position in any small business in which that investment fund has made a qualified investment *for the purpose of*~~[unless]~~:
- (a) *Filling a*~~[The person is filling that]~~ management position~~[ at the direction of the investment fund manger]~~ in an effort to remedy problems arising from a lack of profitability of the small business, or from dishonesty of the persons otherwise managing the small business; or
- (b) *Serving*~~[The authority approves the investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or investment fund manager serving]~~ in a~~[the]~~ management position in the small business *in order to add value to the investment fund and the business by his or her experience, skills, or relationships to help a business succeed.*
- (3)~~[ No investor, officer, director, partner, member, manager, trustee, or employee of an investment fund or investment fund manager shall have a direct or indirect financial interest in any small business in which the investment fund has a qualified investment, except by virtue of the qualified investment made by the investment fund in the small business.~~
- (4)~~] No officer, member, or employee of the authority shall have a direct or indirect financial interest in any investment fund or investment fund manager.~~

Section 29. KRS 164.6011 is amended to read as follows:

As used in KRS *164.6011 to 164.6041*~~[164.6017 to 164.6043]~~, unless the context indicates otherwise:

- (1) "Applied research" means those research activities occurring at universities and in private enterprises that have potential commercial application;
- (2) "Cluster" means a geographically bound concentration of similar, related, or complementary businesses with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services, and that are faced with common opportunities and threats;
- (3) "Commission" means the Kentucky Innovation Commission;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Council" means the Council on Postsecondary Education;
- (6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, person, group, or other entity engaged in nonretail commerce, agribusiness, trade, or manufacturing;
- (7) "Immediate family members" means:



- (a) Spouse and parents-in-law;
  - (b) Parents and grandparents;
  - (c) Children and their spouses; and
  - (d) Siblings and their spouses;
- (8) "Kentucky-based company" means a business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky;
  - (9) "Knowledge-based" means driven by knowledge, innovation, and speed;
  - (10) "Medium-size company" means a business with fifty-one (51) to one hundred fifty (150) employees;
  - (11) "Qualified company" means an eligible company that may be ~~granted~~<sup>awarded</sup> a funding voucher *or award* pending certification;
  - (12) "Science and technology organization" means an independent, nonprofit or quasi-governmental organization, with a statewide mission, that has a demonstrated history of managing complicated programs in the areas of entrepreneurial innovation, science, and technology advancement;
  - (13) "Seed funding" means financing that is provided for early-stage development, refinement, and commercialization of a product, process, or innovation through continuing applied research, advancing the patent process, determining commercial and market potential, or moving research toward development of a prototype; and
  - (14) "Small company" means a firm with fifty (50) or fewer employees.

Section 30. KRS 164.6013 is amended to read as follows:

The General Assembly finds that the general welfare and material well-being of the citizens of the Commonwealth depend on immediate action to develop a strong, entrepreneurial economy, characterized by knowledge, innovation, and speed and that it is in the best interest of the Commonwealth to promote research, innovation, and high-technology enterprises that utilize the higher-order skills of an educated workforce. The provisions in KRS 164.6011 to ~~164.6041~~<sup>164.6041</sup> ~~164.6043 and KRS 154.12-270~~, 154.12-274, ~~and~~ 154.12-278, *and Sections 9 to 12 of this Act* shall be liberally construed and applied to advance public purposes.

Section 31. KRS 164.6015 is amended to read as follows:

- (1) There is established the Kentucky Innovation Commission, as an independent advisory commission, consisting of fifteen (15) members as follows:
  - (a) The Governor or designee;
  - (b) The secretary of the Governor's Executive Cabinet or designee;
  - (c) The secretary of the Cabinet for Economic Development or designee;
  - (d) The president of the Council on Postsecondary Education or designee;
  - (e) The state budget director or designee;
  - (f) The Speaker of the House or designee;
  - (g) The President of the Senate or designee; and
  - (h) Eight (8) at-large members appointed by the Governor as follows:

1. Four (4) members of the private sector possessing extensive experience and expertise relating to managing a high-technology business or engaging in an innovation-driven, knowledge-based enterprise;
  2. One (1) member engaged in the business of venture capital;
  3. One (1) member of the private sector possessing extensive experience and expertise relating to providing or supporting communications infrastructure; and
  4. Two (2) members who are engineers or scientists recognized for their scientific or technological research efforts, or educators with an interest or background in teaching students to become highly skilled workers or entrepreneurs.
- (2) The eight (8) at-large members shall serve terms of four (4) years, except that the original appointments shall be staggered so that two (2) appointments shall expire at two (2) years, three (3) appointments shall expire at three (3) years, and three (3) appointments shall expire at four (4) years from the dates of initial appointment.
  - (3) The commission shall meet quarterly and at other times upon call by the chair.
  - (4) Eight (8) members shall constitute a quorum for conducting business.
  - (5) Members shall receive no compensation except that the at-large members shall be reimbursed for actual and necessary travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.
  - (6) Vacancies shall be filled in the same manner as the original appointment.
  - (7) The chair and vice chair of the commission shall be appointed by the Governor~~[from the private sector membership]~~.
  - (8) The commission shall provide ongoing advice, direction, and policy recommendations to the Governor and the General Assembly relating to the status of Kentucky knowledge-driven businesses, research and development initiatives, and related high-skill training and education in the Commonwealth.
  - (9) The duties and responsibilities of the commission shall be to:
    - (a) Promote the cooperation of private and public entities that have the purpose and duty of advancing the knowledge-based economy in the Commonwealth through technological innovation and knowledge transfer;
    - (b) ***Report on the progress the Commonwealth has made annually toward achieving the goals in Section 30 of this Act through its agreed-upon benchmarks. In the setting of benchmarks the commission shall*** consider performance indicators recommended by public and private experts in and outside of the state in the fields of research and development and economic development, for the purpose of recommending benchmarks. Experts in this state shall include, but not be limited to, representatives from the universities undertaking research and development activities, representatives of the Kentucky Science and Technology Corporation, representatives of targeted technology sectors, representatives of the Cabinet for Economic Development, and representatives of other state agencies having economic development and information technology responsibilities. Outside state experts shall include nationally recognized independent reviewers to assess the competitiveness of technology sectors in this state and the impact of research and development activities on economic development in the

Commonwealth. Quantitative and qualitative indicators may include, but are not limited to, the following:

1. Kentucky companies modernizing to become more technologically innovative and globally competitive;
  2. Research and development initiatives undertaken at Kentucky universities with federal, state, or private funds;
  3. Educational attainment in areas that support the workforce needs of information technology and high-growth knowledge industries;
  4. High-technology sectors and companies moving to and operating in the state;
  5. Patents filed for technology or knowledge-based commercial products, processes, or services;
  6. Businesses using electronic commerce and the communications infrastructure access capacity for Kentucky businesses;~~and~~
  7. Growth in corporate headquarters, research and development centers, high-income employees, and clustering of related technology industries and suppliers;  
*and*
  8. ***Monitoring reports indicating progress made by the Kentucky Innovation Act investments as reported by the Office for the New Economy and the Council on Postsecondary Education;***
- (c) Operate as a common strategic umbrella to advocate for the use of federal, state, local government, and private sector funds to create research and development projects, modernize manufacturing facilities, and promote knowledge-based, technology sectors and companies in the Commonwealth; and
- (d) Report to the Governor and to the General Assembly annually on performance indicators, recommending benchmarks for measuring progress toward the advancement of the knowledge-based economy, technological innovation, and knowledge transfer, and reporting on the programs and initiatives set forth in KRS 164.6019 to ***164.6041***~~[164.6043 and KRS 154.12-270]~~, 154.12-274, and 154.12-278, ***and Sections 9 to 12 of this Act.***
- (10) The support staff for the commission shall be from the office of the state budget director.

Section 32. KRS 164.6017 is amended to read as follows:

- (1) The Council on Postsecondary Education shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 164.6019 to ***164.6041***~~[164.6043]~~, including, but not limited to:
- (a) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities; and
  - (b) Soliciting, borrowing, accepting, receiving, and expending funds from any public or private source, including, but not limited to, general fund appropriations of the Commonwealth, grants or contributions of money, property, labor, or other things of value to be used to carry out the programs' operations, functions, and responsibilities;  
*and*

- (c) *Notwithstanding the provisions in paragraph (a) of this subsection, the commissioner of the Office for the New Economy shall approve the contracts issued by the Council on Postsecondary Education regarding the structure of programs and funding levels in those programs administered by a science and technology organization and created in KRS 164.6021, 164.6029, and 164.6037, and Section 13 of this Act.*
- (2) The council may expend money in the funds created in KRS 164.6019, 164.6027, and 164.6035 for reasonable administrative expenses directly incurred in carrying out the requirements of KRS 164.6019 to **164.6041**~~[164.6043]~~. It is the intent of the General Assembly that the funds created in KRS 164.6019, 164.6027, and 164.6035 be used, to the fullest extent possible, to directly fund project costs. ***It is also the intent of the General Assembly that the first priority of expenditures of any excess revenues generated from the funds created in KRS 164.6019, 164.6027, and 164.6035 is to replenish general fund appropriations for those same purposes.***
- (3) The council shall contract with a science and technology organization to administer the programs created in KRS 164.6021, **164.6029**, and 164.6037~~], and may contract with a science and technology organization to administer the programs created in KRS 164.6029 and 164.6043. The council may contract with the Kentucky Science and Technology Corporation to administer these programs]~~. The council shall approve the application criteria, the process for submission of an application, and the structure and type of outside expertise or peer review used in the application review process in the programs created in KRS 164.6021, 164.6029, and 164.6037.
- (4) No member of the council or the science and technology organization or other administering entity, or their employees or outside experts or their immediate family members, shall directly or indirectly financially benefit in any award, contract, or agreement under the programs.
- (5) The council shall submit an annual report ***prior to October 15*** to ~~the~~ Kentucky Innovation Commission, the Governor, and the General Assembly detailing its work related to the programs created in KRS 164.6021, 164.6029, **and** 164.6037~~, and 164.6043]~~. The annual ***report shall be coordinated with the monitoring report by the Office for the New Economy indicating progress made through investments, and***~~[reports]~~ shall include ***but not be limited to*** reporting on the progress made in achieving each program's purposes, qualitative and quantitative information concerning the applications received, projects approved and undertaken, companies served, and funding amounts invested in each project or program, as appropriate, and findings and recommendations to increase each program's effectiveness in achieving its purposes.
- (6) All records related to the administration of the programs created in KRS 164.6021, 164.6029, **and** 164.6037~~, and 164.6043]~~ shall be deemed property of the council and shall be deemed open records and subject to public inspection under KRS 61.870 to 61.884. Any research that involves or is a patent, trade secret, or other legally protectable interest shall be exempt from inspection until such time as the intellectual property rights have been fully protected.

Section 33. KRS 164.6029 is amended to read as follows:

- (1) There is created and established in the Council on Postsecondary Education a Kentucky Rural Innovation Program to provide ***awards***~~[vouchers]~~ to rural Kentucky-based, small

companies to undertake research, development, and entrepreneurial innovation work in partnership with Kentucky postsecondary institutions, the Small Business Development Center Network in Kentucky, and other entities engaged in research and development work.

- (2) The purpose of the Kentucky Rural Innovation Program is to:
- (a) Accelerate knowledge transfer and technological innovation that improve economic competitiveness and spur economic growth in rural, Kentucky-based, small companies;
  - (b) Support entrepreneurial activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;
  - (c) Stimulate growth-oriented enterprises within the Commonwealth;
  - (d) Encourage partnerships and collaborative projects between private enterprises, Kentucky's postsecondary institutions, research organizations, and the Small Business Development Center Network in Kentucky; and
  - (e) Promote research, development, and entrepreneurial activities that are driven by private sector requirements.

Section 34. KRS 164.6031 is amended to read as follows:

- (1) The *science and technology organization*~~{council}~~ shall have the authority to review applications, *grant awards*~~{award vouchers}~~ to qualifying companies, and certify qualified companies. The *science and technology organization*~~{council}~~ shall develop application criteria and an application process subject to the following limitations. The proposed project shall be likely to:
- (a) Produce a measurable result and be technically sound;
  - (b) Lead to innovative technology or new knowledge;
  - (c) Lead to commercially successful products, processes, or services within a reasonable period of time; or
  - (d) Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within rural Kentucky.
- (2) The applicant shall provide to the *science and technology organization*~~{council}~~ an application that shall include, but not be limited to, the following information:
- (a) Verification that the applicant is an eligible company, a Kentucky-based company, and a small company, and is located in a rural area of the state;
  - (b) Written justification that the project application is consistent with the program purposes;
  - (c) A research, development, and entrepreneurial plan that is sufficient in scope for review;
  - (d) A financial analysis and resource support plan that includes sufficient commitments by the applicant and others, in addition to *a Kentucky Rural Innovation*~~{an}~~ award~~{voucher}~~, providing a reasonable probability of the success of the project endeavor;

- (e) Sufficient detail concerning proposed project partners, type and amount of work to be performed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
  - (f) A statement of the economic development potential of the project.
- (3) The *science and technology organization*~~[council]~~ shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the council shall make a determination of the application and may determine that the applicant is a qualified company as defined in KRS 164.6011.
  - (4) Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (5) of this section the *science and technology organization*~~[council]~~ shall present the qualified company and partnering entities with a certification authorizing *award*~~[voucher]~~ funding.
  - (5) Prior to receiving certification authorizing *award*~~[voucher]~~ funding the qualified company shall:
    - (a) Negotiate an agreement and funding contract with one (1) or more of Kentucky's postsecondary institutions, the Small Business Development Center Network for approved project activities specified under KRS 154.01-750(4), or other entity engaged in the research and development work, that is satisfactory to the *science and technology organization*~~[council]~~, to undertake the research and development and entrepreneurial work; and
    - (b) Provide assurance to the *science and technology organization*~~[council]~~ that the collaborating parties have adequately addressed the ownership and disposition of patents, royalties, and all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and a partnering entity.
  - (6) The *science and technology organization*~~[council]~~ shall set forth guidelines as to when and how all areas of the state will be notified about the program availability and guidelines for making application to the program. The *science and technology organization*~~[council]~~ shall determine a deadline, from the date *an award*~~[a voucher]~~ is *granted*~~[awarded]~~, that certification shall be made. If certification is not made by that deadline the~~[voucher]~~ award is made void.
  - (7) Prior to certifying a qualified company, the *science and technology organization*~~[council]~~ may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky rural innovation fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of this section and KRS 164.6029 and 164.6033.
  - (8) The council *shall*~~[may]~~, in effectuating the provisions of this section, contract with *a*~~any public agency, private entity, or]~~ science and technology organization to administer and manage the Kentucky Rural Innovation Program.

Section 35. KRS 164.6033 is amended to read as follows:

Project funding in the Kentucky Rural Innovation Program shall have the following limitations:

- (1) ~~[Voucher]~~Award funds shall be used as seed funding as defined in KRS 164.6011;

- (2) ~~[Voucher]~~ Award funds may be used for those entrepreneurial training topics specified in KRS Chapter 154.01-750(4), if they meet particular objectives of a qualified company as delineated in the project application; and
- (3) The amount of a ~~[voucher]~~ fund award to a qualified company shall not exceed ~~fifty~~~~[twenty-five]~~ thousand dollars ~~(\$50,000)~~~~(\$25,000)~~ each year for two (2) years, equal to a maximum of ~~one hundred~~~~[fifty]~~ thousand dollars ~~(\$100,000)~~~~(\$50,000)~~.

Section 36. KRS 292.320 is amended to read as follows:

- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
  - (a) To employ any device, scheme, or artifice to defraud;
  - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
  - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
  - (a) To employ any device, scheme, or artifice to defraud the other person; or
  - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
  - (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client ***unless the client is an "accredited investor," as defined by Rule 501 of the Securities Act of 1933;***
  - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
  - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after

admission, will be only a minority of the members and will have only a minority interest in the business.

- (5) Subsection (3)(a) of this section shall *also* not apply to a contract with any person or class of persons that the commissioner by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this section. The commissioner may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the commissioner determines are consistent with this section.

Section 37. KRS 292.330 is amended to read as follows:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless *the person*~~he~~ is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:
- (a) *The person*~~He~~ is so registered under this chapter;~~or~~
  - (b) *The person*~~He~~ is registered as a broker-dealer under this chapter; *or*
  - (c) *The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to Section 19 of this Act.*
- (2) It is unlawful for any covered adviser to transact business in this state unless:
- (a) The person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the commissioner by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;
  - (b) The person is registered as a broker-dealer under this chapter;
  - (c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or
  - (d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the commissioner unless the investment adviser representative is registered under this chapter.

- (3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the commissioner or the commissioner's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).
- (a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose



registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.

- (b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.
- (c) The registration application shall contain whatever information the commissioner requires concerning such matters as:
  - 1. The applicant's form and place of organization;
  - 2. The applicant's proposed method of doing business;
  - 3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;
  - 4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
  - 5. The applicant's financial condition and history.
- (4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:
  - (a) The commissioner may specify an earlier effective date and ~~he~~ may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
  - (b) The commissioner may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
  - (c) The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the commissioner notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.
- (5) The commissioner may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.

- (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.
- (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the commissioner may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.
- (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the commissioner may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the commissioner by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The commissioner may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.
  - (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the commissioner or the commissioner's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the commissioner or the commissioner's designee.
  - (b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the commissioner or the commissioner's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the commissioner or the commissioner's designee.
- (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the commissioner or the commissioner's designee prior to the expiration thereof an application containing the information the

commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the commissioner or the commissioner's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the commissioner or the commissioner's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the commissioner may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

- (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.
- (b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.
- (12) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule prescribes. All records required shall be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.
- (b) Every registered broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes. If a broker-dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.
- (c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.

- (d) The commissioner may make periodic examinations, within or without this state, of each broker-dealer, firm employing issuer agents, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer, firm employing issuer agents, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, firm employing issuer agents, or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.
  - (e) The commissioner may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
  - (f) The commissioner may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.
  - (g) The commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the commissioner be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The commissioner may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.
- (13) (a) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
5. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;
6. Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:
  - a. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;
  - b. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;
  - c. A United States Postal Service fraud order;
  - d. A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or
  - e. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;
7. Has engaged in dishonest or unethical practices in the securities business;
8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;
9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the commissioner may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:

- a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or
  - b. Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.
10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days; or

- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
1. The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
  2. The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
  3. The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
  4. The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;
  5. The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;
  6. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent

an investment adviser in doing any of the acts which make him an investment adviser.

- (c) The commissioner may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the commissioner that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.
- (d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.
- (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the commissioner; the withdrawal or termination is effective upon receipt by the commissioner of the notice.
- (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.

- (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the commissioner expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The commissioner may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the commissioner deems necessary and appropriate in the public interest or for the protection of investors and the commissioner may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

Section 38. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:
- (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
  - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
  - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
  - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
  - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
  - (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
  - (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
  - (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
  - (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:



1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
  - a. Solicitation of indications of interest in accordance with the terms and conditions as the commissioner may adopt by rule; or
  - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;
2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
  - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
  - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
3. The transaction satisfies one (1) of the following conditions:
  - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
  - b. There are not more than fifteen (15) purchasers in Kentucky *described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors"*~~and each Kentucky purchaser is an "accredited investor"~~ as defined by Rule 501 of the Securities Act of 1933~~or is a purchaser described in subdivision a. of this subparagraph~~; or
  - c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed *one million*~~five hundred thousand~~ dollars *(\$1,000,000)*~~(\$500,000)~~, the total number of purchasers *who are not accredited investors*, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security or is an accredited investor or a purchaser described in subdivision a. of this subparagraph;
4. Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this subsection are not relieved of compliance with KRS 292.330~~(6)~~;

5. The commissioner may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
6. The commissioner may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the commissioner determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the commissioner before any sale in reliance on the requested increase and shall be accompanied by the following:
  - a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
  - b. A copy of *any*~~the~~ offering circular or other written materials being distributed to prospective purchasers;
  - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
  - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
  1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
  2. The number of subscribers does not exceed twenty-five (25); and
  3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;
- (l) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
  - (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
    - 1. The transaction is at a price reasonably related to the current market price;
    - 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act; and
    - 3. Copies of such federal registration statements, reports, forms or exhibits as the commissioner may by rule or order require are filed with the commissioner;
  - (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
    - 1. The transaction is at a price reasonably related to the current market price;
    - 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act;
    - 3. Copies of such federal registration statements, forms, reports, or exhibits as the commissioner may by rule or order require are filed with the commissioner; and
    - 4. Such sales by any such person comply with such rules as the commissioner may prescribe; or
  - (q) Any transaction for which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The commissioner may by order deny or revoke the exemption specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

Section 39. KRS 164.6023 is amended to read as follows:

- (1) The science and technology organization shall have the authority to review applications, qualify companies, and certify qualified companies.

- (2) The science and technology organization shall develop application criteria and an application process subject to the following limitations. The proposed research and development project shall be likely to:
  - (a) Produce a measurable result and be technically sound;
  - (b) Lead to innovative technology or new knowledge;
  - (c) Lead to commercially successful products, processes, or services within a reasonable period of time; or
  - (d) Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within the Commonwealth.
- (3) The applicant shall provide to the science and technology organization an application that shall include, but not be limited to, the following information:
  - (a) Verification that the applicant is an eligible company that meets the definition of a Kentucky-based company and medium-size company or small company;
  - (b) A technical research plan that is sufficient for outside expert review;
  - (c) A detailed financial analysis that includes the commitment of resources by the applicant and others;
  - (d) Sufficient detail concerning proposed project partners, type and amount of work to be performed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
  - (e) A statement of the economic development potential of the project.
- (4) The science and technology organization shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the science and technology organization shall make a determination of the application and may determine that the applicant is a qualified company as defined in KRS 164.6011.
- (5) Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (6) of this section the science and technology organization shall present ~~the~~<sup>both</sup> qualified company, *the project partner, if any*, and *the university in the Commonwealth* with a certification authorizing voucher funding.
- (6) Prior to receiving certification authorizing voucher funding from the science and technology organization, the qualified company shall:
  - (a) Negotiate an agreement and funding contract with a university in the Commonwealth *and with a project partner, if any*, that is satisfactory to the science and technology organization, to undertake the research and development work; and
  - (b) Provide assurance to the science and technology organization that the university and the qualified company have negotiated the ownership and disposition of patents, royalties, all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and the university.
- (7) Prior to certifying a qualified company, the science and technology organization may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity or related position on behalf of the Kentucky

research and development voucher fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of KRS 164.6021, 164.6023, and 164.6025.

- (8) The science and technology organization, upon approval by the council, shall set forth guidelines as to when and how all areas of the state will be notified about the program's availability and a program schedule, including, but not limited to, the following:
- (a) A review cycle including:
    - 1. A deadline for submission of applications at least biannually; and
    - 2. A deadline for reviewing applications of no more than one hundred twenty (120) days after the application submission deadline; and
  - (b) A deadline, from the date an applicant is determined to be a qualified company, by which certification shall be made. If certification is not made by that deadline the funding voucher award is made void.

Section 40. KRS 164.6025 is amended to read as follows:

Project funding in the Kentucky Research and Development Voucher Program shall have the following limitations:

- (1) ***At a minimum, fifty-one percent (51%) of any*** voucher award funds from the state fund shall be expended within the university ***in the Commonwealth*** under contract;
- (2) The maximum amount of voucher funds awarded to a qualified company shall not exceed one hundred thousand dollars (\$100,000) each year for two (2) years, equal to a maximum of two hundred thousand dollars (\$200,000); and
- (3) At a minimum, the qualified company shall match the project award by a one-to-one dollar ratio for each year of the project. The science and technology organization has sole discretion to authorize an in-kind contribution in lieu of part of the industry match if the science and technology organization determines that the financial limitations of the qualified company warrants this authorization.

Section 41. The following KRS sections are repealed:

- 154.12-270 Cabinet to undertake strategic technology capacity initiative and study -- Study results.
- 154.20-253 Definitions for KRS 154.20-250 to 154.20-284.
- 154.20-257 Approval of investment funds, cash contributions, and investment fund managers -- Tax credits authorized by KRS 154.20-263 -- Agreement between authority and investment fund manager -- Transfer of funds -- Schedule for investment -- Prohibition against awarding of tax credits and approval of investment funds or investment fund managers after specific dates.
- 154.20-259 Information that applicant must disclose to authority in application -- Confidentiality of applications -- Power of authority -- Purpose of investment funds -- Criteria for approval of investment fund managers -- Authority for administrative regulations.
- 154.20-261 Fund manager's business office -- Initial capitalization, qualified investments, and other regulations governing fund -- Written disclosure to investors required -- Limitation of Commonwealth's liability.

- 154.20-263 Investor entitled to nonrefundable tax credit against income tax or corporation license tax -- Authority to carry excess tax credit forward -- Tax credits not transferable and not applicable to interest, penalties, or other additions to investor's tax liability.
- 154.20-267 Limitations on total amount of tax credits -- Order in which authority approves credits to investors.
- 154.20-269 Procedure for obtaining tax credit -- Confidentiality of investor's filings.
- 154.20-271 Disallowance of cash contributions redeemed or withdrawn -- Penalty for failure to invest in small businesses and abatement of penalty -- Personal liability of investors to Revenue Cabinet -- Administration by Revenue Cabinet.
- 154.20-273 Investment fund manager's reports to Revenue Cabinet and to authority, content and time of filing -- Authority's status reports to General Assembly, content and time of filing -- Confidentiality of reports from investment fund managers to the authority -- Fees.
- 164.6043 Council to create nonprofit regional technology corporations -- Organization, powers, and duties of corporations -- Funding.

**Approved April 8, 2002**