CHAPTER 1

(HB 108)

AN ACT relating to the protection of unborn children and declaring an emergency.

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

SECTION 1. KRS CHAPTER 507A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) As used in this chapter:

(a) "Abortion" has the same meaning as in KRS 311.720;

(b) "Health care provider" has the same meaning as in KRS 304.17A-005; and

(c) "Unborn child" means a member of the species homo sapiens in utero from conception onward, without regard to age, health, or condition of dependency.

(2) In a prosecution for the death of an unborn child, nothing in this chapter shall apply to acts performed by or at the direction of a health care provider that cause the death of an unborn child if those acts were committed:

(a) During any abortion for which the consent of the pregnant woman has been obtained or for which the consent is implied by law in a medical emergency; or

(b) As part of or incident to diagnostic testing or therapeutic medical or fertility treatment, provided that the acts were performed with that degree of care and skill which an ordinarily careful, skilled, and prudent health care provider or a person acting under the provider's direction would exercise under the same or similar circumstances.

(3) Nothing in this chapter shall apply to any acts of a pregnant woman that caused the death of her unborn child.

SECTION 2. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of fetal homicide in the first degree when:

(a) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.020(1)(a), he causes the death of an unborn child; except that in any prosecution, a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of fetal homicide in the second degree or any other crime; or

(b) Including but not limited to the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he wantonly engages in conduct which creates a grave risk of death to an unborn child and thereby causes the death of an unborn child.

(2) Fetal homicide in the first degree is a capital offense.

SECTION 3. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of fetal homicide in the second degree when:

(a) With intent to cause serious physical injury to an unborn child or with the intent necessary to commit an offense under KRS 507.030(1)(a), he causes the death of an unborn child; or

(b) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.030(1)(b), he causes the death of an unborn child under circumstances which do not constitute fetal homicide in the first degree because he acts under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of Section 2 of this Act.

(2) Fetal homicide in the second degree is a Class B felony.

SECTION 4. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of fetal homicide in the third degree when he wantonly causes the death of an unborn child, including but not limited to situations where the death results from the person's operation of a motor vehicle.

(2) Fetal homicide in the third degree is a Class C felony.

SECTION 5. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of fetal homicide in the fourth degree when, with recklessness, he causes the death of an unborn child.

(2) Fetal homicide in the fourth degree is a Class D felony.

SECTION 6. A NEW SECTION OF KRS CHAPTER 507A IS CREATED TO READ AS FOLLOWS:

The death of an unborn child shall not result in the imposition of a sentence of death, either as a result of the violation of Section 2 of this Act or as a result of the aggravation of another capital offense under KRS 532.025(2).

Section 7. Whereas current criminal law leaves unborn children outside of its coverage, and unborn children are in dire need of that coverage, an emergency is declared to exist and this Act shall take effect upon signature of the Governor or upon its otherwise becoming law.

Approved February 20, 2004

CHAPTER 2

(HB 287)

AN ACT relating to porcine animal assessment referendums.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15 of this Act, unless the context otherwise requires:

(1) "Association" means any commission, council, board, or other body;

(2) "Producer" means every person who produces and markets porcine animals; and

(3) "New producer" means a producer who was not engaged in the business of producing porcine animals at the time a referendum was conducted in accordance with the provisions of Sections 1 to 15 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

No association meeting or activity undertaken to carry out the provisions of Sections 1 to 15 of this Act and intended to benefit all of the producers, handlers, and processors of porcine animals shall be deemed or considered illegal or in restraint of trade.

SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) Any existing association which is fairly representative of the porcine animal producers of Kentucky may at any time after the enactment of Sections 1 to 15 of this Act make application to the State Board of Agriculture on forms prescribed by the board for certification and approval for the purpose of conducting a referendum among the producers of porcine animals upon the question of levying an assessment under the provisions of Sections 1 to 15 of this Act, and for collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:

(a) Applicant's name;

(b) Applicant's address;

(c) Date;

(d) Program to be undertaken for producers;

(e) Brief statement of how the program is to be implemented;

(f) Referendum to be conducted on a statewide or areawide basis;

(g) Proposed effective date of the program;

(h) Geographic area, by counties, of producers to be affected by the program; and

(i) Signature of the applicant.

(2) The Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt of the application.

SECTION 4. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

Upon being certified by the Commissioner, the association shall be fully authorized and empowered to hold and conduct on the part of the producers of porcine animals a referendum on the question of whether or not the producers shall levy upon themselves an assessment under, and subject to, and for the purposes stated in Sections 1 to 15 of this Act. The referendum may be conducted either on a statewide or areawide basis.

SECTION 5. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

Any referendum conducted under the provisions of Sections 1 to 15 of this Act may be held either on an areawide or statewide basis, as determined by the duly certified association before the referendum is called. The referendum may be participated in by all porcine animal producers, including owners of farms on which porcine animals are produced and tenants sharing in the proceeds of porcine animals. In the referendum, individuals eligible for participation shall vote upon the question of whether or not there shall be levied an assessment in the amount set forth in the call for the referendum.

SECTION 6. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

The manner, conduct, and management of any referendum held under the provisions of Sections 1 to 15 of this Act shall be under the supervision and direction of the Commissioner, and all expenses in connection with the referendum shall be borne by the association conducting the referendum.

SECTION 7. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) With respect to any referendum conducted under the provisions of Sections 1 to 15 of this Act, the Commissioner shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which any amount collected shall be applied.

(2) Any assessment levied by any referendum conducted under the provisions of Sections 1 to 15 of this Act shall be used for the purpose of financing or contributing towards the financing of a program of research, market development, and education to increase the domestic and foreign consumption, use, sale, and markets for porcine animals and porcine animal products.

(3) No assessment levied by any referendum conducted under the provisions of Sections 1 to 15 of this Act shall exceed fifty cents ($0.50) per hundred dollars ($100) worth of sales on porcine animals marketed in the state by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer in the area in which the referendum was held.

SECTION 8. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) No assessment levied under Section 7 of this Act shall be effective as long as the Federal Pork Promotion, Research, and Consumer Information Act of 1985 is in effect.

(2) If the federal act is terminated or suspended, any assessment levied under Section 7 of this Act shall become effective and shall be collected and utilized according to the provisions of Sections 1 to 15 of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

The hours, voting places, rules and regulations, and the area within which the referendum will be conducted shall be established and determined by the Commissioner. The referendum date, area, hours, voting places, and rules and regulations with respect to the holding of the referendum shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the

referendum, and direct written notice shall also be given to each county or area agricultural extension agent in any county covered by the referendum. The notice shall also contain a statement of the amount of the assessment proposed to be levied, and shall state the method by which the assessment shall be collected and how the proceeds from the assessment shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of Sections 1 to 15 of this Act.

SECTION 10. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

The Commissioner shall prepare and distribute in advance of the referendum the question to be presented to the voters and shall arrange for the necessary poll holders for conducting the referendum. Within ten (10) days following the referendum, the Commissioner shall canvass and publicly declare the result of the referendum.

SECTION 11. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

If, in the referendum called under the provisions of Sections 1 to 15 of this Act, a majority of the eligible producers in the area in which the referendum is conducted, who vote in the referendum, vote in the affirmative and in favor of levying and collecting the assessment proposed in the referendum, then the assessment shall be collected in the manner determined and announced by the association conducting the referendum.

SECTION 12. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) If a majority of the eligible producers who vote in the referendum vote in favor of the assessment, then the Commissioner shall notify by certified mail every person licensed to operate a livestock market in the state, and every person who operates a meat packing or slaughter establishment which buys porcine animals directly from the producer, that on and after the date designated in the notice, which shall be not less than thirty (30) days nor more than sixty (60) days after the mailing of the notice by the Commissioner, the amount of the assessment shall be deducted by all sales markets or purchasers of porcine animals, or by their agents or representatives, from the purchase price paid the seller of porcine animals.

(2) On or before the fifteenth day of each month all assessments deducted shall be remitted to the association certified by the assessment referendum, less three percent (3%) which may be retained to compensate the livestock market operator, meat packer, or slaughter establishment operator for the expense of collecting and remitting the assessment.

(3) The books and records of all livestock market operators, meat packers, and slaughter establishment operators shall at all times during regular business hours be open for inspection by the Commissioner or his duly authorized agents for the purpose of ascertaining the accuracy of the amounts remitted.

SECTION 13. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment has been levied and collected under the provisions of Sections 1 to 15 of this Act, if dissatisfied with the assessment and the result of the assessment, shall have the right to demand of and receive from the treasurer of the certified association a refund of the assessment collected from the producer if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer.

SECTION 14. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that fifty percent (50%) of the producers in the referendum area are not participating in the program, the Commissioner shall then conduct a referendum among the producers in the area. If, after holding the referendum, a majority of the producers in the area reject the program, it shall be terminated as of the end of the month in which the referendum for the area was conducted and held; otherwise, the assessment program shall continue in effect.

(2) If the certified association of producers expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall, within fifteen (15) days following receipt of the request, convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the month in which the board action is taken. If the program is terminated, the Commissioner shall notify, by certified mail, all operators of a livestock market, meat packing establishment, or slaughter establishment of the termination of the program.

(3) If the certified association requests the Commissioner, in writing, to hold a referendum on the question of increasing the assessment within the limits of Sections 1 to 15 of this Act, the Commissioner shall, within fifteen (15) days of the receipt of the request, convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary with the request, shall, if the request is approved, conduct a referendum in accordance with the provisions of Sections 1 to 15 of this Act.

SECTION 15. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

If, in the judgment of the board or the duly certified association, an operator of a livestock market, meat packing establishment, or slaughter establishment has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of Sections 1 to 15 of this Act, the board or the duly certified association may make application to the Franklin Circuit Court for an order enjoining the act, or acts, or practices and obtain a restraining order and preliminary injunction against the operator.

Approved March 4, 2004

CHAPTER 3

(HCR 67)

A CONCURRENT RESOLUTION confirming the appointment of Kenneth W. Winters to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint thirteen citizen members to the Council on Postsecondary Education, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, the Governor has appointed Kenneth W. Winters as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2009; and

WHEREAS, the House of Representatives and the Senate find that Kenneth W. Winters meets the requirements of KRS 164.0053 and KRS 164.011 for service on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 164.011, hereby confirm the appointment of Kenneth W. Winters to the Council on Postsecondary Education for a term expiring December 31, 2009.

Section 2. The Clerk of the House of Representatives shall notify Kenneth W. Winters, 1500 Glendale Road, Murray, Kentucky 42071 and Governor Ernie Fletcher, State Capitol Building, Room 100, Frankfort, Kentucky 40601, in writing, of the General Assembly's action.

Approved March 9, 2004

CHAPTER 4

(HCR 23)

A CONCURRENT RESOLUTION confirming the appointment of Dan H. Branham to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has appointed Dan H. Branham to the Education Professional Standards Board representing deans of the college of education at public universities for a term expiring June 7, 2004; and

WHEREAS, the House of Representatives and the Senate find that Dan H. Branham meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Dan H. Branham to the Education Professional Standards Board for a term expiring June 7, 2004.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Dr. Dan H. Branham, 302 Burchett Boulevard, Morehead, Kentucky 40351 and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 9, 2004

CHAPTER 5

(HCR 24)

A CONCURRENT RESOLUTION confirming the appointment of Wilson L. Stone to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has appointed Wilson L. Stone to the Education Professional Standards Board representing local boards of education for a term expiring September 18, 2006; and

WHEREAS, the House of Representatives and the Senate find that Wilson L. Stone meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Wilson L. Stone to the Education Professional Standards Board for a term expiring September 18, 2006.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Mr. Wilson L. Stone, 1481 Jefferson School Road, Scottsville, Kentucky 42164 and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 9, 2004

CHAPTER 6

(HCR 31)

A CONCURRENT RESOLUTION confirming the appointment of Linda L. Livers to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has appointed Linda L. Livers to the Education Professional Standards Board representing elementary teachers to fill a vacancy, created by a resignation, for the remainder of the unexpired term ending September 18, 2006; and

WHEREAS, the House of Representatives and the Senate find that Linda L. Livers meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the appointment of Linda L. Livers to the Education Professional Standards Board to fill a vacancy, created by a resignation, for the remainder of the unexpired term ending September 18, 2006.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Ms. Linda L. Livers, 313 Clearview Avenue, Bowling Green, Kentucky 42101, and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 9, 2004

CHAPTER 7

(HCR 34)

A CONCURRENT RESOLUTION confirming the reappointment of Lydia Sweeney Coffey to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has reappointed Lydia Sweeney Coffey to the Education Professional Standards Board representing elementary teachers for a term expiring September 18, 2007; and

WHEREAS, the House of Representatives and the Senate find that Lydia Sweeney Coffey meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the reappointment of Lydia Sweeney Coffey to the Education Professional Standards Board for a term expiring September 18, 2007.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Ms. Lydia Sweeney Coffey, 619 Bartle Drive, Liberty, Kentucky 42539, and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 9, 2004

CHAPTER 8

(HCR 66)

A CONCURRENT RESOLUTION confirming the appointment of John S. Turner to the Council on Postsecondary Education.

WHEREAS, KRS 164.011 requires the Governor to appoint thirteen citizen members to the Council on Postsecondary Education, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, the Governor has appointed John S. Turner as a citizen member of the Council on Postsecondary Education for a term expiring December 31, 2009; and

WHEREAS, the House of Representatives and the Senate find that John S. Turner meets the requirements of KRS 164.0053 and KRS 164.011 for service on the Council on Postsecondary Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 164.011, hereby confirm the appointment of John S. Turner to the Council on Postsecondary Education for a term expiring December 31, 2009.

Section 2. The Clerk of the House of Representatives shall notify John S. Turner, 530 Hill Creek Road, Lebanon, Kentucky 40033 and Governor Ernie Fletcher, State Capitol Building, Room 100, Frankfort, Kentucky 40601, in writing, of the General Assembly's action.

Approved March 9, 2004

CHAPTER 9

(HB 200)

AN ACT relating to independent contractors.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 317 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of subsection (2) of this section, any person engaged in barbering who leases or rents space at a barber shop from the holder of a license to operate the barber shop shall be deemed an independent contractor.

(2) The board shall not hold the holder of a license to operate a barber shop responsible for violations of this chapter, or of administrative regulations promulgated pursuant to this chapter, that are committed by an independent contractor.

SECTION 2. A NEW SECTION OF KRS CHAPTER 317A IS CREATED TO READ AS FOLLOWS:

(1) For purposes of subsection (2) of this section, any person engaged in the practice of cosmetology or nail technology who leases or rents space at a respective beauty salon or nail salon from the holder of a license to operate the beauty salon or nail salon shall be deemed an independent contractor.

(2) The board shall not hold the holder of a license to operate a beauty salon or nail salon responsible for violations of this chapter, or administrative regulations promulgated pursuant to this chapter, that are committed by an independent contractor.

Approved March 12, 2004

CHAPTER 10

(HB 341)

AN ACT relating to the practice of pharmacy.

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

Section 1. KRS 315.010 is amended to read as follows:

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

(1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;

(2) "Association" means the Kentucky Pharmacists Association;

(3) "Board" means the Kentucky Board of Pharmacy;

(4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

(5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual

combination of drug ingredients. Compounding, as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

(6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;

(7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;

(8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;

(9) "Drug" means any of the following:

(a) Articles recognized as drugs or drug products in any official compendium or supplement thereto; or

(b) Articles, other than food, intended to affect the structure or function of the body of man or other animals; or

(c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

(d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;

(10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to, the following areas:

(a) Evaluation of prescription drug orders and patient records for:

1. Known allergies;

2. Rational therapy contraindications;

3. Appropriate dose and route of administration;

4. Appropriate directions for use; or

5. Duplicative therapies.

(b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;

(c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or

(d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;

(11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;

(12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;

(13) "Medical order" means a lawful order of a specifically-identified practitioner for a specifically-identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

(14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;

(15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;

(16) "Pharmacist intern" means a natural person who is:

(a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;

(b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or

(d) An individual participating in a residency or fellowship program approved by the board for internship credit;

(17) "Pharmacy" means every place where:

(a) Drugs are dispensed under the direction of a pharmacist;

(b) Prescription drug orders are compounded under the direction of a pharmacist; or

(c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;

(18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;

(19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection***;***~~[,]~~ administration of ***medications or biologics***~~[medication]~~ in the course of dispensing or maintaining a prescription drug order***; the administration of adult immunizations pursuant to prescriber-approved protocols;***~~[, and]~~ drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;

(20) "Practitioner" has the same meaning given in KRS 217.015(35);

(21) "Prescription drug" means a drug which:

(a) Under federal law is required to be labeled with either of the following statements:

1. "Caution: Federal law prohibits dispensing without prescription"; or

2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

(b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;

(22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

(23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;

(24) "Society" means the Kentucky Society of Health-Systems Pharmacists;

(25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

(26) "Wholesaler" means any person who legally buys drugs for resale or distribution to persons other than patients or consumers.

Section 2. This Act shall be known as the Robert L. Barnett, Jr. R. Ph. Act.

Approved March 15, 2004

CHAPTER 11

(HB 295)

AN ACT relating to administrative regulations and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds that certain administrative regulations as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient but became effective notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)2. or 13A.331(5)(a)2., on or after March 27, 2002, and before the effective date of this Act.

(2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, each administrative regulation referenced in subsection (1) of this section shall be null, void and unenforceable as of the effective date of this Act.

(3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, any of the administrative regulations referenced in subsection (1) of this section for a period beginning on the effective date of this Act, and concluding on June 1 of the following year.

(4) A list of the administrative regulations referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.

Section 2. Whereas it is essential for the public and the administrative agencies of state government that the status of previously promulgated administrative regulations be clearly established, so that the regulated activities of citizens and the regulatory actions of agencies can proceed efficiently and within the law, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Became law March 16, 2004, without Governor's signature.

CHAPTER 12

(SB 118)

AN ACT relating to the sale of electric power from cooperatives to municipalities.

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

Section 1. KRS 279.120 is amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, corporations formed under this chapter shall supply electric energy, furnish services and sell personal property, except that transferred in part payment for other personal property, to their members only.

(2) Except as provided in subsection (3) of this section and in KRS 279.125, any corporation formed under this chapter may supply electric energy, furnish services and sell property, to the extent of not more than forty-nine percent (49%) of its total business, to nonmembers of the corporation, including any federal agency, any ~~[other]~~state, and any county, city or political subdivision~~[thereof]~~.

(3) A corporation formed under this chapter may sell and lease back any part or all of its property free of the restrictions contained in subsections (1) and (2) of this section, or any other section of the Kentucky Revised Statutes except that such sale shall be subject to KRS 279.140.

Section 2. KRS 279.125 is amended to read as follows:

Notwithstanding the provisions of any other section of the Kentucky Revised Statutes, ***unless specific authorization is granted by the Public Service Commission,*** no corporation formed under this chapter shall transmit, distribute or furnish electric energy for resale, either directly or indirectly, to any electric utility now or hereafter owned or controlled, in whole or in part, by any municipality or municipalities, or instrumentalities thereof, incorporated on June 21, 1974, except to any such electric utility to which such corporation's electric facilities are physically connected on June 21, 1974; and provided, further, that no provision herein shall prevent a corporation organized under this chapter from interconnecting for exchanges of energy with any such municipal utility which, on June 21, 1974, owns and operates electric generating facilities adequate to supply the electric requirements of the municipality. ***The required authorization as used in this section shall not be construed to extend the jurisdiction of the Public Service Commission over municipally owned electric systems.***

Approved March 22, 2004

CHAPTER 13

(HB 319)

AN ACT relating to establishing bank branches.

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

Section 1. KRS 287.920 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and

(b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky in accordance with an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky in accordance with an interstate merger transaction in which the out-of-state state bank is the resulting bank ***in accordance with the requirements of Kentucky laws and administrative regulations. If the laws of the home state of the out-of-state bank place more restrictive terms or requirements on Kentucky state banks seeking to acquire and merge with a bank in that state, the interstate merger of the out-of-state bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks in that state***. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 287.180(2).

(4) No interstate merger transaction under subsection (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the transaction.

(5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.

(6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.

(7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:

(a) Authorized under the laws of the host state for banks chartered by the host state; or

(b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Approved March 22, 2004

CHAPTER 14

(HCR 30)

A CONCURRENT RESOLUTION confirming the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2007.

WHEREAS, KRS 7B.030 requires the Governor to appoint six at-large members of the Kentucky Long-Term Policy Research Center Board, subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, by Executive Order 2003-1026, dated October 14, 2003, the Governor reappointed Daniel Hall of Louisville, Kentucky, representing at-large members, and submitted his reappointment for legislative confirmation; and

WHEREAS, the House of Representatives and the Senate find that Daniel Hall meets the age and residency requirements of KRS 7B.030 and has demonstrated an interest in the well-being and development of the Commonwealth, as required by that statute;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate do confirm the reappointment of Daniel Hall to the Kentucky Long-Term Policy Research Center Board for a term expiring October 6, 2007.

Section 2. The Clerk of the House of Representatives shall send a copy of this Resolution, and notification of its adoption, to Mr. Daniel Hall, 2200 Wynnewood Circle, Louisville, Kentucky 40222 and to Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601.

Approved March 23, 2004

CHAPTER 15

(HCR 32)

A CONCURRENT RESOLUTION confirming the reappointment of Thomas James Stull to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has reappointed Thomas James Stull to the Education Professional Standards Board representing middle or secondary teachers for a term expiring September 18, 2007; and

WHEREAS, the House of Representatives and the Senate find that Thomas James Stull meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the reappointment of Thomas James Stull to the Education Professional Standards Board for a term expiring September 18, 2007.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Mr. Thomas James Stull, 839 Wesley Drive, Villa Hills, Kentucky 41017, and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 23, 2004

CHAPTER 16

(HB 59)

AN ACT relating to continuing care retirement communities.

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

Section 1. KRS 216B.335 is amended to read as follows:

The establishment of continuing care retirement community nursing home beds under KRS 216B.015, 216B.020, 216B.330, and 216B.332 shall be limited to the time period commencing upon July 14, 2000, and ending July 31, ***2008***~~[2004]~~. ***After July 31, 2008,*** no further continuing care retirement community nursing home beds shall be established under KRS 216B.015, 216B.020, 216B.330, and 216B.332 without affirmative actions of the General Assembly.

Approved March 23, 2004

CHAPTER 17

(HCR 33)

A CONCURRENT RESOLUTION confirming the reappointment of Kristen Moe Gregory to the Education Professional Standards Board.

WHEREAS, KRS 161.028 requires the Governor to appoint 15 citizen members to the Education Professional Standards Board, subject to confirmation by the House of Representatives and the Senate; and

WHEREAS, pursuant to KRS 161.028, the Governor has reappointed Kristin Moe Gregory to the Education Professional Standards Board representing elementary teachers for a term expiring September 18, 2007; and

WHEREAS, the House of Representatives and the Senate find that Kristin Moe Gregory meets the requirements of KRS 161.028 for service on the Education Professional Standards Board;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate, as required by KRS 161.028, hereby confirm the reappointment of Kristin Moe Gregory to the Education Professional Standards Board for a term expiring September 18, 2007.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution, and written confirmation of its adoption, to Ms. Kristin Moe Gregory, 3625 Echo Valley Circle, LaGrange, Kentucky 40031, and to the Governor, State Capitol, Room 100, Frankfort, Kentucky 40601.

Approved March 23, 2004

CHAPTER 18

(SB 248)

AN ACT relating to economic development.

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

Section 1. KRS 154.26-090 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved costs, ***the amount of the license tax credit pursuant to Section 4 of this Act, and any limitations the authority may deem necessary,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) ***The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs.***

(b) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant**.**~~[;]~~

(c)~~[(b)]~~ In consideration of the execution of the agreement, the approved company may be permitted during the time not to exceed ten (10) years during which the agreement is in effect, which time shall commence on the date of the agreement for purposes of the inducements:

1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project as determined under KRS 141.403;

2. A credit against the Kentucky license tax imposed by KRS 136.070~~[on the capital of the approved company generated by or arising out of the economic revitalization project]~~ as determined under KRS 136.0704; plus

3. The aggregate assessment withheld by the approved company in each year;

(d)~~[(c)]~~ The tax ***credits***~~[credit]~~ allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved cost]~~ that has not yet been recovered,~~[which fifty percent (50%) shall be]~~ reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the ***amount that the company may recover under paragraph (a) of this subsection***~~[entire fifty percent (50%) of the approved cost]~~ has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

(e)~~[(d)]~~ The agreement shall provide that ***the***~~[:~~

~~1. The]~~ term shall not be longer than the earlier of:

1.~~[a.]~~ The date on which the approved company has received inducements or ***withheld***~~[withholds]~~ assessments equal to ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs of its economic revitalization project]~~; or

2.~~[b.]~~ Ten (10) years from the date of the execution of the agreement.

(f)~~[2.]~~ Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

1.~~[a.]~~ A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or

2.~~[b.]~~ In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

(g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.

(h)~~[3.]~~If in any fiscal year of the approved company during which the agreement is in effect the total of the ***tax credits***~~[income tax credit]~~ granted to the approved company plus the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs then expended]~~, the approved company shall pay the excess to the Commonwealth as income tax.

(i)~~[4.]~~ If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this section***~~[fifty percent (50%) of the approved costs then expended]~~, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(j)~~[(e)]~~ All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.

(2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, ***it shall not assess the wages of an employee who is party to an individual employment contract with the approved company***~~[a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.~~

~~(3) If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor the agreement shall be executed unless the assessment is approved by a majority of the employees voting. If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.~~

~~(4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.~~

~~(5) Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed]~~.

(3)~~[(6)]~~ Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 2. KRS 154.26-100 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, ***five***~~[six]~~ percent ***(5%)***~~[(6%)]~~ of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project***, unless;***

(a) ***The***~~[. However, if the]~~ appropriation agreement is consummated, ***in which case*** the assessment shall be ***four***~~[five]~~ percent ***(4%)***~~[(5%)]~~ of each employee's gross wages subject to the income tax imposed by KRS 141.020;

(b) ***The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the assessment shall equal four percent (4%) plus the percentage of the local occupational license fee that the local government or governments have agreed to forgo; or***

(c) ***The local government or governments in which the project is located have no occupational license fee, in which case the assessment shall be four percent (4%)***.

(2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 ***in the form of a simultaneous adjustment*** equal to ***four-fifths (4/5)***~~[two-thirds (2/3)]~~ of the assessment***, unless:***

(a) ***The***~~[; or if the]~~ appropriation agreement is consummated, ***in which case*** the credit shall be equal to ***one hundred percent (100%)***~~[four-fifths (4/5)]~~ of the assessment***;***

(b) ***The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the credit shall be equal to the total assessment less the local occupational license fee; or***

(c) ***If the local government or governments in which the project is located have no local occupational license fee, in which case the credit shall be equal to one hundred percent (100%) of the assessment***.

(3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to ***one-fifth (1/5)***~~[one-sixth (1/6)]~~ of the assessment, unless***:***

(a) The appropriation agreement is consummated***; or***

(b) ***The local occupational license fee is less than one percent (1%), in which case the credit shall equal the same amount as the local occupational license fee***.

(4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.

(7) By October 1 of each year, the Revenue Cabinet of the Commonwealth shall certify to the authority, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending

June 30 of that year and job revitalization assessment fees taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements.

SECTION 3. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) If, prior to the effective date of this Act, the authority has given its preliminary approval designating an eligible company as a preliminarily approved company and authorizing the undertaking of an economic revitalization project, but has not entered into a final agreement with the company, the company shall have the one-time option to:

(a) Operate under the existing agreement as preliminarily approved; or

(b) Request the authority to amend the agreement to comply with the amendments in Sections 1, 2, 4, and 5 of this Act.

(2) If, prior to the effective date of this Act, the authority has entered into a final agreement with an eligible company, and if the final agreement is still in effect, the company shall have the one-time option to:

(a) Operate under the existing final agreement; or

(b) Request the authority to amend only the employee assessment portion of the final agreement to comply with the amendment in Section 2 of this Act.

Section 4. KRS 136.0704 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" means a company approved under KRS 154.26-010 and subject to license tax under KRS 136.070;

(b) "Economic revitalization project" shall have the same meaning as set forth in KRS 154.26-010; and

(c) "Tax credit" means the tax credit allowed in KRS 154.26-090(1)***(c)***~~[(b)]~~2.

(2) An approved company ***that entered into a revitalization agreement prior to the effective date of this Act*** shall:

(a) Compute the company's total license tax due as provided by KRS 136.070; and

(b) Compute the license tax due excluding the capital attributable to an economic revitalization project.

(3) The tax credit shall be the amount by which the tax computed under subsection (2)(a) of this section exceeds the tax computed under subsection (2)(b) of this section; however, the credit shall not exceed the limits set forth in KRS 154.26-090.

(4) The capital attributable to an economic revitalization project shall be determined by a formula approved by the Revenue Cabinet.

(5) ***For an approved company that enters into a revitalization agreement after the effective date of this Act, the tax credit shall be negotiated pursuant to Section 1 of this Act, but shall not exceed one hundred percent (100%) of the computed license tax attributable to the location of the economic revitalization project. In no case shall the tax credit exceed the limits set forth in Section 1 of this Act.***

(6) The license tax attributable to a revitalization project shall be determined by a formula approved by the Revenue Cabinet.

(7) The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

Section 5. KRS 141.310 is amended to read as follows:

(1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days,

including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.

(4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.

(6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the cabinet at least thirty (30) days before the first payroll period for which it is to be used.

(7) The cabinet may, by regulations, authorize employers:

(a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and

(c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.

(8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee or the Commonwealth's contribution of KRS 154.24-110(3) applies. If the provisions in KRS 154.24-150(3) or (4) apply, the offset, the offset shall be one hundred percent (100%) of the assessment.

(10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees an assessment provided in KRS 154.22-070 or KRS 154.28-110 may offset the fee against the Kentucky income tax required to be withheld from the employee under this section.

(11) ***Any***~~[Effective January 1, 1992, any]~~ employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be ***four-fifths (4/5)***~~[two-thirds (2/3)]~~ of the amount of the assessment fee withheld from the employee, or if the agreement under KRS 154.26-090(1)***(f)***~~[(d)]~~2.~~[b.]~~ is consummated, the offset shall be ***one hundred percent (100%)***~~[four-fifths (4/5)]~~ of the assessment fee.

(12) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.23-055 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the Commonwealth's contribution as determined by KRS 154.23-055(1) to (3).

(13) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars ($50,000).

(14) The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 6. KRS 154.26-010 is amended to read as follows:

As used in ***this subchapter*** ~~[KRS 154.26-015 to 154.26-100]~~, unless the context clearly indicates otherwise:

(1) "Agreement" means a revitalization agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;

(3) "Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)***(f)*** ~~[(d)]~~2. ~~[b.]~~, among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company;

(4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(5) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(6) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(8) "Commonwealth" means the Commonwealth of Kentucky;

(9) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity:

(a) Employing or intending to employ full-time a minimum of twenty-five (25) persons engaged in manufacturing or agribusiness operations at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where manufacturing or agribusiness operations has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080; or

(b) Having a base contract for annual delivery of at least four (4) million tons of coal mined within the Commonwealth and employing a minimum of five hundred (500) persons engaged in coal mining and processing operations at facilities, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities on or adjacent to where coal mining and processing operations have been temporarily suspended or severely reduced, and which meets the standards promulgated by the authority under KRS 154.26-080;

(11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;

(12) "Inducements" means the Kentucky tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(13) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;

(14) "Coal mining and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;

(15) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter; and

(16) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Approved March 26, 2004

CHAPTER 19

(HB 412)

AN ACT relating to the merger of fire protection districts.

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

Section 1. KRS 75.020 is amended to read as follows:

(1) The territorial limits of an established fire protection district, or a volunteer fire department district, as established under KRS 75.010 to 75.080, may be enlarged or diminished in the following way: The trustees of the fire protection district or of the volunteer fire department district shall file a petition in the county clerk's office of the county in which that district and the territory to be annexed or stricken off, or the greater part thereof, is located, describing the territory to be annexed or stricken and setting out the reasons therefor. Notice of the filing of such petition shall be given by publication as provided for in KRS Chapter 424. On the day fixed in the notice, the county judge/executive shall, if the proper notice has been given, and the publication made, and no written objection or remonstrance is interposed enter an order annexing or striking off the territory described in the petition. Fifty-one percent (51%) or more of the freeholders of the territory sought to be annexed or stricken off may, at any time before the date fixed in the notice, remonstrate in writing, filed in the clerk's office, to the action proposed. If such written remonstrance ***is*** ~~[be]~~ filed***, the*** ~~[said]~~ clerk shall promptly give notice to the trustees of the fire protection district, or of the volunteer fire department district, and the county judge/executive shall hear and determine the same. If upon such hearing, the county

judge/executive finds from the evidence that a failure to annex or strike off such territory will materially retard the functioning of the fire protection district or the volunteer fire department district and materially affect adversely the owners and the inhabitants of the territory sought to be annexed or stricken off, he ***or she*** shall enter an order, granting the annexation or striking off the territory. In the latter event, no new petition to annex or strike off all or any part of the same territory shall be entertained for a period of two (2) years. Any aggrieved person may bring an action in Circuit Court to contest the decision of the county judge/executive.

(2) The property in any territory annexed to a fire protection district or to a volunteer fire department district shall not be liable to taxation for the purpose of paying any indebtedness incurred by the fire protection district or the volunteer fire department district prior to the date of the annexation of such territory, except such indebtedness as represents ***the*** balance owing on ***the*** purchase price of firefighting equipment. The property in any territory stricken off from a fire protection district or a volunteer fire department district by the incorporation of or annexation by a city of this Commonwealth shall not be relieved of liability of such taxes as may be necessary to pay its proportionate share of the indebtedness incurred while such territory was a part of that district. Territories stricken by action of the county judge/executive under the provisions of subsection (1) shall be relieved of liability for all indebtedness incurred by the fire protection district or the volunteer fire department district.

(3) Any city that maintains a "regular fire department," and has either by incorporation or annexation caused property to be stricken from a fire protection district or a volunteer fire department district, shall assume the liability of such taxes as may be necessary to pay the proportional share of the indebtedness incurred while such territory was a part of said district.

(4) The territorial limits of two (2) or more fire protection districts, or volunteer fire department districts, as established by KRS 75.010 to 75.080, may be merged into one (1) fire protection district or volunteer fire department district as follows:

(a) The trustees of each fire protection district or volunteer fire department district shall file a joint petition in the county clerk's office of the county in which all of the districts and the territory to be merged into one (1) district, or the greater part of the district, is located, describing the territory to be merged into the district and setting out the reasons for the merger;

(b) Notice of the filing of the petition shall be given by publication as provided in KRS Chapter 424 for public notices;

(c) On the day fixed in the notice, the county judge/executive shall, if proper notice by publication has been given, and no written objection or remonstrance has been made, enter an order merging the fire protection districts or volunteer fire department districts described in the petition;

(d) Fifty-one percent (51%) or more of the property owners of the territory sought to be merged into one (1) district may, at any time before the date fixed in the notice, remonstrate by written petition to the county clerk regarding their objection to the merger of the districts. If a petition is filed, the county clerk shall give prompt notice to the trustees of the fire protection districts or the volunteer fire protection districts and the county judge/executive;

(e) The county judge/executive shall schedule a hearing regarding the petition and shall give public notice as to the date, time, and place of the hearing. If after the hearing, the county judge/executive finds from the evidence that a failure to merge the territory will materially retard the functioning of the fire protection districts or volunteer fire department districts and materially affect adversely the owners and the inhabitants of the territory sought to be merged, he ***or she*** shall enter an order granting the merger of the districts into one (1) fire protection district or volunteer fire department district;

(f)~~[If a merger of districts occurs, no new petition to merge or change the territorial boundaries of the newly merged district shall be attempted for a period of two (2) years; and~~

~~(g)]~~ Any aggrieved person may bring an action in Circuit Court to contest the decision of the county judge/executive regarding the merger fire protection districts or volunteer fire department districts.

(5) The property in any fire protection district or volunteer fire department district which is merged with another fire protection district or volunteer fire department district shall not be liable to taxation for the purpose of paying any indebtedness incurred by the other fire protection district or volunteer fire department district prior to the date of the merger into one (1) fire protection district, except indebtedness which represents a balance

owed on the purchase price of firefighting equipment from the other fire protection district or volunteer fire department district.

Approved March 29, 2004

CHAPTER 20

(HB 466)

AN ACT relating to alcoholic beverages.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

(1) A supplemental bar license shall authorize the licensee to sell or serve distilled spirits or wine by the drink at retail for consumption on the licensed premises from an additional location other than the main bar of an existing retail drink licensed premises. A supplemental bar license is a nonquota license and shall not be transferable to other premises.

(2) A supplemental bar license shall not be issued unless:

(a) The licensee applies to the state distilled spirits administrator and meets all requirements for obtaining a supplemental bar license; and

(b) The licensee pays the applicable license fee prescribed in KRS 243.030(8), (17), (23), (29), (35), or (43).

(3) A licensee authorized to sell and serve malt beverages may sell and serve malt beverages at any location on the licensed premises without obtaining a supplemental bar license.

Section 2. KRS 241.010 is amended to read as follows:

As used in this chapter and in KRS Chapters 242 and 243, unless the context requires otherwise:

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced.

(2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:

(a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;

(b) Patented, patent, and proprietary medicines;

(c) Toilet, medicinal, and antiseptic preparations and solutions;

(d) Flavoring extracts and syrups;

(e) Denatured alcohol or denatured rum;

(f) Vinegar and preserved sweet cider;

(g) Wine for sacramental purposes;

(h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and

(i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof.

(3) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030.

(4) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail.

(5) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.

(6) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept.

(7) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership.

(8) "Cabinet" means the Revenue Cabinet unless the context requires otherwise.

(9) ***"Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests.***

(10) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes.

(11) ~~[(10)]~~ "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider.

(12) ~~[(11)]~~ "City administrator" means city alcoholic beverage control administrator.

(13) ~~[(12)]~~ "Commissioner" means the commissioner of alcoholic beverage control.

(14) ~~[(13)]~~ "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions.

(15) ~~[(14)]~~ "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment.

(16) ~~[(15)]~~ "County administrator" means county alcoholic beverage control administrator.

(17) ~~[(16)]~~ "Department" means the Department of Alcoholic Beverage Control.

(18) ~~[(17)]~~ "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages.

(19) ~~[(18)]~~ "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky.

(20) ~~[(19)]~~ "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse.

(21) ~~[(20)]~~ "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail.

(22) ~~[(21)]~~ "Dry territory" means a county, city, district, or precinct in which a majority of voters have voted in favor of prohibition.

(23) ~~[(22)]~~ "Farm winery" means a winery located on a Kentucky farm with a producing vineyard, orchard, or similar growing area, manufacturing and bottling wines in an amount not to exceed twenty-five thousand (25,000) gallons per year.

(24)~~[(23)]~~ "Election" means:

(a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or

(b) Any other election not pertaining to alcohol.

(25)~~[(24)]~~ "Field representative" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes.

(26)~~[(25)]~~ "License" means any license issued pursuant to KRS 243.020 to 243.670.

(27)~~[(26)]~~ "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670.

(28) "Limited restaurant" means a facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a territory where prohibition is no longer in effect under KRS 242.185(6).

(29)~~[(27)]~~ "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under subsection (2)(i) of this section.

(30)~~[(28)]~~ "Manufacture" means distill, rectify, brew, bottle, and operate a winery.

(31)~~[(29)]~~ "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages.

(32) "Minor" means any person who is not twenty-one (21) years of age or older.

(33)~~[(30)]~~ "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license.

(34)~~[(31)]~~ "Prohibition" means the application of KRS 242.190 to 242.430 to a territory.

(35)~~[(32)]~~ "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name.

(36)~~[(33)]~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made.

(37)~~[(34)]~~ "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers***,***~~[and]~~ that has a bona fide kitchen facility***, and that receives at least fifty percent (50%) of its gross receipts from the sale of food***.

(38)~~[(35)]~~ "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not.

(39)~~[(36)]~~ "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers.

(40)~~[(37)]~~ "Retail sale" means any sale where delivery is made in Kentucky to any consumers.

(41) ~~[(38)]~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required.

(42) ~~[(39)]~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage.

(43) ~~[(40)]~~ "Secretary" means the secretary of the Kentucky Revenue Cabinet.

(44) "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited.

(45) ~~[(41)]~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage.

(46) ~~[(42)]~~ "Small winery" means a winery producing wines from grapes, other fruit, or honey produced in Kentucky, unless exempt under KRS 243.155(2), in an amount not to exceed fifty thousand (50,000) gallons in one (1) year.

(47) ~~[(43)]~~ "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer.

(48) ~~[(44)]~~ "State administrator" means the administrator of the Distilled Spirits Unit or the administrator of the Malt Beverage Unit, or both, as the context requires.

(49) "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures.

(50) ~~[(45)]~~ "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages.

(51) ~~[(46)]~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively.

(52) ~~[(47)]~~ "Warehouse" means any place in which alcoholic beverages are housed or stored.

(53) ~~[(48)]~~ "Wholesale sale" means a sale to any person for the purpose of resale.

(54) ~~[(49)]~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet.

(55) ~~[(50)]~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section.

(56) ~~[(51)]~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded. It includes a winery for the manufacture of wine in any state or county other than Kentucky, if the out-of-state winery has and maintains a branch factory, office, or storeroom within this state and receives wine within this state consigned to a United States government bonded winery, warehouse, or storeroom located within this state.

Section 3. KRS 243.025 is amended to read as follows:

(1) All of the fees paid into the State Treasury for licenses issued under KRS 243.030 and 243.040 shall be credited to a revolving trust and agency account, as provided in KRS 45.253, for the Department of Alcoholic Beverage Control.

(2) ***All fees associated with the agency's server training program, except for board-ordered fees, shall be collected on a cost recovery basis and shall be credited to the revolving trust and agency account established under subsection (1) of this section.***

(3) These moneys shall be used solely for the administration and enforcement of KRS Chapters 241, 242, 243, and 244. The moneys in the account shall not lapse at the close of the fiscal year.

Section 4. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the administrator of the distilled spirits unit, the fees for which shall be:

(1) Distiller's license, per annum $2,500.00

(2) Rectifier's license, per annum $2,500.00

(3) Blender's license, per annum $2,500.00

(4) Vintner's license, per annum $1,000.00

(5) Small winery license, per annum $100.00

(a) Small winery off-premises retail license, per annum $25.00

(6) Wholesaler's license, per annum $2,000.00

(7) Retail package license, per annum:

(a) In counties containing cities of the first class or a consolidated local government $800.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(e) In all other counties $400.00

(8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

(a) In counties containing cities of the first class or a consolidated local government $1,000.00

(b) In counties containing cities of the second class $700.00

(c) In counties containing cities of the third class $600.00

(d) In counties containing cities of the fourth class $500.00

(e) The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.

(9) Transporter's license, per annum $100.00

(10) Dining car license, per annum $100.00

(11) Special nonbeverage alcohol vendor's license, per annum $50.00

(12) Special industrial alcohol license, per annum $50.00

(13) Special nonindustrial alcohol license, per annum $50.00

(14) Special agent's or solicitor's license, per annum $25.00

(15) Special storage or warehouse license and bottling house storage license,

per annum $500.00

(16) Special temporary liquor license, per event $100.00

(17) Special private club license, per annum $300.00

The fee for each special private club license shall be the fee set out in this subsection; however, there shall be no charge for each special private club license issued in excess of six (6) that is issued to the same licensee at the same premises.

(18) Special Sunday retail drink license, per annum $500.00

(19) Nonresident special agent or solicitor's license, per annum $100.00

(20) Transport permit, nonresident license, per annum $100.00

(21) Through transporter's license, per annum $100.00

(22) Freight forwarder's license, per annum $100.00

(23) Restaurant wine license, per annum..... $500.00

(24) Farm winery license, per annum $100.00

(a) Farm winery, off-premises retail outlet license, per annum $25.00

(25) Special temporary wine license, per event $50.00

(26) Caterer's license, per annum $800.00

(27) Souvenir retail liquor license, per annum $500.00

(28) Special temporary distilled spirits and wine auction license, per event $100.00

(29) Airport drink license, per annum $1,000.00

(30) Convention center or convention hotel complex license, per annum $5,000.00

(31) Extended hours supplemental license, per annum $2,000.00

(32) Horse race track license, per annum $2,000.00

(33) Automobile race track license, per annum $2,000.00

(34) Air or rail system license, per annum $2,000.00

(35) Riverboat license, per annum $1,000.00

(36) Bottling house license, per annum $1,000.00

(37) Hotel in-room license, per annum $200.00

(38) Bonded warehouse license, per annum $1,000.00

(39) Air transporter liquor license, per annum $500.00

(40) Sampling license, per annum $100.00

(41) Replacement or duplicate license $25.00

(42) ***Entertainment destination license, per annum $7,500.00***

(43) (a) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine and malt beverages), new applicants:

1. In counties containing cities of the first class or a consolidated local government..... ..... $1,200.00

2. In counties containing cities of the second class $900.00

3. In counties containing cities of the third class $800.00

4. In counties containing cities of the fourth, fifth, or sixth classes..... $700.00

(b) Renewals for limited restaurant licenses or limited golf course licenses shall be $50.00 less than the applicable licensing fee for new applicants.

(44) Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars ($50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (25), (28), ***(40),*** and (41). The application fee shall be applied to the licensing fee if the license is issued; otherwise it shall be retained by the department.

Section 5. KRS 243.033 is amended to read as follows:

(1)~~[As used in this section, unless the context requires otherwise, "caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food and beverages in a licensed and inspected commissary, transporting the food and beverages to a location selected by the customer away from the commissary premises, and serving the food and beverages to the customer's guests.~~

~~(2)]~~ A caterer's license may be issued as a supplementary license to a caterer that holds a retail package liquor license or a distilled spirits and wine by the drink retail license***, or a limited restaurant license***.

(2)~~[(3)]~~ The caterer's license may be issued ***as a primary license*** to a caterer ***in any wet territory***~~[, that does not meet the requirements of subsection (2) of this section,]~~ for the premises that serves as the caterer's commissary ***and designated banquet hall. No primary caterer's license shall be issued to a premises that operates as a restaurant***. The alcoholic beverage stock of the caterer shall be kept under lock and key at the licensed premises during the time that the alcoholic beverages are not being used in conjunction with a catered function.

(3)~~[(4)]~~ The caterer's license shall authorize the caterer to:

(a) Purchase and store alcoholic beverages in the manner prescribed in KRS 243.250, 243.280, and 244.310;

(b) ***Transport, sell, serve, and deliver malt beverages by the drink at locations away from the licensed premises or at the caterer's designated banquet hall in conjunction with the catering of food and malt beverages for a customer and his or her guests, in:***

1. Cities and counties in which prohibition is not in effect under KRS 242.185(6) if the receipts from the catering of food at any catered event are at least seventy percent (70%) of the gross receipts from the catering of both food and malt beverages; or

2. All other wet territory if the receipts from the catering of food at any catered event are at least thirty-five percent (35%) of the gross receipts from the catering of both food and malt beverages;

(c) Transport, sell, serve, and deliver ***distilled spirits and wine***~~[alcoholic beverages]~~ by the drink at locations~~[in wet territory]~~ away from the licensed premises ***or at the caterer's designated banquet hall*** in conjunction with the catering of food and ***alcoholic*** beverages for a customer and his guests***, in:***

1. Cities and counties in which prohibition is not in effect under KRS 242.185(6) if the receipts from the catering of food at any catered event are at least seventy percent (70%) of the gross receipts from the catering of both food and alcoholic beverages;

2. Cities of the fourth class and counties containing cities of the fourth class in which prohibition is not in effect under KRS 242.185(1) to (5) if the receipts from the catering of food at any catered event are at least fifty percent (50%) of the gross receipts from the catering of both food and alcoholic beverages; or

3. All other wet territory in which the sale of distilled spirits and wine by the drink is authorized if the receipts from the catering of food at any catered event are at least thirty-five percent (35%) of the gross receipts from the catering of both food and alcoholic beverages~~[. Distilled spirits and wine may only be transported, sold, served, or delivered in cities of the first, second, or third classes, counties containing cities of the first, second, or third classes, and cities of the fourth class in which the sale of distilled spirits and wine has been adopted pursuant to KRS 242.127]~~;

(d)~~[(c)]~~ Receive and fill telephone orders for alcoholic beverages in conjunction with the ordering of food for a ***catered event***~~[function catered by the licensee]~~; and

(e) ~~[(d)]~~ Receive payment for alcoholic beverages served at a ***catered event*** ~~[function]~~ on a by-the-drink or ***by-the-event*** ~~[by the function]~~ basis. The caterer may bill the host for by-the-function sales of alcoholic beverages in the usual course of the caterer's business.

(4) ~~[(5)]~~ A caterer licensee shall not cater alcoholic beverages at locations for which retail alcoholic beverage licenses or special temporary licenses have been issued.

(5) ~~[(6)]~~ A caterer licensee shall not cater distilled spirits and wine on Sunday except in territory in which the Sunday sale of distilled spirits and wine is permitted under the provisions of KRS 244.290 ***and 244.295***. A caterer licensee shall not cater malt beverages on Sunday except in territory in which the Sunday sale of malt beverages is permitted under the provisions of KRS 244.480.

(6) ~~[(7)]~~ The location at which alcoholic beverages are sold, served, and delivered by a caterer, pursuant to this section, shall not constitute a public place for the purpose of KRS Chapter 222. If the location is a multi-unit structure, only the unit or units at which the function being catered is held shall be excluded from the public place provisions of KRS Chapter 222.

(7) ~~[(8)]~~ The caterer licensee shall post a copy of his caterer's license at the location of the function for which alcoholic beverages are catered.

(8) ~~[(9)]~~ The name and license numbers of the caterer shall be painted ***or securely attached***, in a contrasting color, in a form prescribed by the board by promulgation of an administrative regulation, upon all vehicles used by the caterer to transport alcoholic beverages.

(9) ~~[(10)]~~ All restrictions and prohibitions applying to a distilled spirits and wine retail drink licensee not inconsistent with this section, shall apply to the caterer licensee.

(10) ~~[(11)]~~ The caterer licensee shall ***maintain records as set forth in KRS 244.150 and in administrative regulations promulgated by*** ~~[submit a list of functions catered or to be catered including location, host, date, and time upon request of]~~ the board.

Section 6. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the administrator of the malt beverages unit, the fees for which shall be:

(1) Brewer's license, per annum $2,500.00

(2) Microbrewery license, per annum $500.00

(3) Distributor's license, per annum $500.00

(4) Malt beverage retail license, per annum:

(a) New applicants $200.00

(b) Renewals $150.00

(5) Dining car license, per annum $200.00

(6) Transporter's license, per annum $100.00

(7) Special temporary license, per event $50.00

(8) Special off-premises retail storage license, per annum $100.00

(9) Distributor's storage, per annum $250.00

(10) Special beer transporter's license, per annum $100.00

(11) Brew-on-premises license, per annum $500.00

(12) Out-of-state brewer license, per annum $1,500.00

(13) Malt beverage warehouse license, per annum $1,000.00

(14) Replacement or duplicate license, per annum $25.00

(15) ***Limited out-of-state brewer license, per annum $250.00***

(16) Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, as provided for by administrative regulations promulgated by the state board.

Applicants for special licenses provided for under the authority granted in subsection (15) may be exempt from so much of the provisions of subsection (1)(f) of KRS 243.100 set out in administrative regulations promulgated by the board. A nonrefundable application fee of fifty dollars ($50) shall be charged to process each new application for a license under this section except for subsections (6), (7), (10), and (14). The application fee shall be applied to the licensing fee if the license is issued, or otherwise the fee shall be retained by the department.

Section 7. KRS 243.060 is amended to read as follows:

(1) The fiscal court of each county or a consolidated local government in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of trafficking in alcoholic beverages. These licenses may be issued by the county or consolidated local government administrator. The license fees shall not exceed the following:

(a) Retail package licenses, per annum:

1. In counties containing cities of the first class or a consolidated local government $1,200.00
2. In counties containing cities of the second class $1,000.00
3. In counties containing cities of the third class $800.00
4. In counties containing cities of the fourth class $600.00
5. In all other counties $400.00

(b) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:

1. In counties containing cities of the first class or a consolidated local government $1,600.00
2. In counties containing cities of the second class $1,000.00
3. In counties containing cities of the third class $800.00
4. In counties containing cities of the fourth class $600.00

(c) Special temporary liquor license, per event:

1. In counties containing cities of the first class or a consolidated local government $266.66
2. In counties containing cities of the second class $166.66
3. In counties containing cities of the third class $133.34
4. In counties containing cities of the fourth class $100.00

(d) Restaurant wine license, per annum:

1. New applicants $600.00
2. Applicants for renewal $400.00

(e) Special temporary wine license, per event $50.00

(f) Special private club license, per annum $300.00

(g) Special Sunday retail drink license, per annum $300.00

(h) Retail malt beverage license, per annum:

1. New applicants $400.00
2. Applicants for renewal $150.00

(i) Special temporary malt beverage license, per event $25.00

(j) 1. Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages), new applicants:

a. In counties containing cities of the first class or a consolidated local government..... $2,000.00

b. In counties containing cities of the second class..... $1,400.00

c. In counties containing cities of the third class..... $1,200.00

d. In counties containing cities of the fourth, fifth, or sixth class..... $1,000.00

2. Renewals for limited restaurant licenses or limited golf course licenses are $250.00 less than the applicable licensing fee for new applicants.

(2) Any amount paid to any city within the county as a license fee for the same privilege for the same year may be credited against the county license fee.

(3) If any part of this section is held invalid, all of this section and of KRS 243.600 shall also be considered invalid.

Section 8. KRS 243.070 is amended to read as follows:

The legislative body of any city or a consolidated local government in which traffic in alcoholic beverages is not prohibited under KRS Chapter 242 may impose license fees for the privilege of manufacturing and trafficking in alcoholic beverages. Only those licenses set out in this section shall be issued, and the fee for each shall not exceed the specified amount:

(1) Distilled spirit licenses as set forth in KRS 243.030:

(a) Distiller's license, per annum $500.00

(b) Rectifier's license, per annum $3,000.00

(c) Blender's license, per annum $3,000.00

(d) Wholesaler's distilled spirits and wine license, per annum $3,000.00

(e) Distilled spirits and wine retail package license, per annum:

1. In counties containing cities of the first class or a consolidated local government $1,200.00

2. In counties containing cities of the second class $1,000.00

3. In counties containing cities of the third class $800.00

4. In counties containing cities of the fourth class $600.00

5. In all other counties $400.00

(2) Distilled spirits and wine retail drink license, motel drink license, airport drink license, restaurant drink license, or supplemental bar license, per annum:

(a) In counties containing cities of the first class or a consolidated local government $1,600.00

(b) In counties containing cities of the second class $1,000.00

(c) In counties containing cities of the third class $800.00

(d) In counties containing cities of the fourth class $600.00

(3) Distilled spirits and wine special temporary liquor license, per event:

(a) In counties containing cities of the first class or a consolidated local government $266.66

(b) In counties containing cities of the second class $166.66

(c) In counties containing cities of the third class $133.33

(d) In counties containing cities of the fourth class $100.00

(4) Special temporary wine license, per event $50.00

(5) Distilled spirits and wine special temporary auction license, per event $200.00

(6) Special private club license, per annum $300.00

(7) Distilled spirits and wine special Sunday retail drink license, per annum $300.00

(8) Extended hours supplemental license, per annum $2,000.00

(9) Nonresident special agent or solicitor's license, per annum $40.00

(10) Restaurant wine license, per annum:

(a) New applicants $600.00

(b) Applicants for renewal $400.00

(11) Caterer's license, per annum $800.00

(12) Riverboat license, per annum $1,200.00

(13) Horse race track license, per annum $2,000.00

(14) Convention center or convention hotel complex license, per annum $2,000.00

(15) Bottling house distilled spirits license or wine storage license, per annum $1,000.00

(16) Automobile race track license, per annum.....$2,000.00

(17) Souvenir retail liquor license, per annum $1,000.00

(18) Malt beverage licenses as follows:

(a) Brewer's license, per annum $500.00

(b) Microbrewery license, per annum $500.00

(c) Malt beverage distributor's license, per annum $400.00

(d) Retail malt beverage license, per annum $200.00

(e) Special temporary retail malt beverage license, per event $25.00

(f) Malt beverage brew-on-premises license, per annum $100.00

(19) Limited restaurant license or limited golf course license, per annum (includes distilled spirits, wine, and malt beverages), new applicants:

(a) In counties containing cities of the first class or a consolidated local government.....$1,800.00

(b) In counties containing cities of the second class.....$1,200.00

(c) In counties containing cities of the third class.....$1,000.00

(d) In counties containing cities of the fourth, fifth, or sixth class.....$800.00

Section 9. KRS 243.480 is amended to read as follows:

(1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his or her discretion order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of

the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars ($1,000) per day; wholesale liquor licensees, four hundred dollars ($400) per day; wholesale beer licensees, four hundred dollars ($400) per day; retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink, fifty dollars ($50) per day; and all remaining licensees, fifty dollars ($50) per day.

(2) Payments in lieu of suspension ***or for board-ordered agency server training, collected on a cost recovery basis,*** collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.

(3) ***In addition to or in lieu of a suspension of a license, the board may order a licensee to pay for and require attendance and completion by some or all of the licensee's alcoholic beverage servers in the agency's server training program.***

(4) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS Chapter 13B.

Section 10. KRS 243.630 is amended to read as follows:

(1) For purpose of this section, "transfer" means:

(a) The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or

(b) The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.

(2) Any license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall not be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state administrator in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section, each railroad dining car shall be deemed premises to be separately licensed.

(3) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the department, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state administrator. The state administrator shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.

(4) Any acquisition of interest in a license without prior authorization shall be void.

(5) All applications for approval of a transfer shall be made in writing to the state administrator having jurisdiction over the license.

(6) Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the department may prescribe.

(7) The appropriate state administrator shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the administrator and the transferee, but it shall not be acted upon before the end of the public protest period outlined in KRS 243.360.

(8) No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise ***without the written consent of the state malt beverage administrator or the state distilled spirits administrator or both***.

(9) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.

(10) A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.

(11) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in KRS 243.500(5). A transfer shall not take place until the

department is notified by the Kentucky Revenue Cabinet that the licensee's indebtedness has been paid or resolved to the cabinet's satisfaction. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.

Section 11. KRS 244.050 is amended to read as follows:

(1) No retail licensee shall give away any alcoholic beverage in any quantity, or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, 243.156, 243.157, and subsection (2) of this section.

(2) A retailer licensed to sell distilled spirits and wine under KRS 243.030(7), (8), or (27) may, after acquiring a license under KRS 243.030(40), allow customers to sample distilled spirits and wine under the following conditions:

(a) Sampling shall be permitted only on licensed premises and, for ***licensees*** ~~[retailers]~~ licensed under KRS 243.030***(7),*** (8)***,*** or (27), during regular business hours;

(b) A licensee shall not charge for the samples provided to customers;

(c) Sample sizes shall not exceed:

1. One (1) ounce for wine; and

2. One-half (1/2) ounce for distilled spirits; and

(d) A licensee shall limit a customer to:

1. Two (2) distilled spirits samples per day; and

2. Six (6) wine samples per day.

(3) Retailers licensed under KRS 243.030(7) or (8) shall:

(a) Notify the Department of Alcoholic Beverage Control at least seven (7) days in advance of conducting a sampling event; and

(b) Limit a sampling event to a period not to exceed four (4) consecutive hours between 12 noon and 8 p.m.

Approved March 30, 2004

CHAPTER 21

(HB 251)

AN ACT relating to lost and missing children.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act, unless the context otherwise requires, "state building" means any structure that houses government offices of the Commonwealth of Kentucky. The term does not include government offices of counties, municipalities, special districts, public corporations, public instrumentalities, or the Court of Justice.

SECTION 2. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The "Code Adam" safety protocol is hereby established and shall be implemented by all administrators in state buildings in the following manner:

(1) When a parent, tutor, or guardian notifies any employee of a state building that his or her child is lost or missing, the employee shall obtain from the parent, tutor, or guardian a detailed description of the minor, including but not limited to the name, age, color of eyes, height, weight, clothing, and the shoes the child was wearing at the time the child was last seen before becoming lost or missing;

(2) From the closest telephone available, the same employee shall alert the state building administrator or the person designated in the state building's "Code Adam" plan, who shall then notify the occupants of the state building through the loudspeaker system or through any other fast and effective means of communication that "Code Adam" has been activated;

(3) The employee shall escort the parent, tutor, or guardian to the main door of the state building to help in identifying the child;

(4) Persons designated by the administrator shall monitor all state building exits to ascertain that the minor does not leave the state building without the parent, tutor, or guardian. In addition, two (2) or more employees, as may be necessary, shall be assigned to search the parking areas of the state building. This process shall not entail the closing or locking of any door of the state building;

(5) Any child, or person with a child, leaving the state building shall be asked to go through the main exit previously designated by the administrator. If, once there, the child or person wishes to leave the state building, he or she shall be allowed to do so after it has been determined that the minor who is leaving is not the child being searched for and that the person with the minor is the parent, tutor, or guardian of the child, and the person presents a government-issued photo identification;

(6) After "Code Adam" has been announced through the state building's loudspeaker system or through any other fast and effective means of communication, the employees shall search throughout the entire state building, and at least two (2) employees, or more as deemed necessary, shall be assigned to each floor to certify that the minor is not present. Employees who are directly serving a member of the public at that time and employees who have been previously excluded by the administrator shall not be compelled to participate in the search;

(7) If the minor is found unharmed and appears to have been simply lost or missing in the state building, the child shall be immediately taken to the parent, tutor, or guardian;

(8) If the minor is found in the company of any person other than the child's parent, tutor, or guardian, any reasonable means shall be taken to delay the exit of the child and the person with whom the child was found from the state building until a peace officer arrives, the child and the person with whom the child is found both are properly identified, and the circumstances of the situation are determined;

(9) If the minor is not found within a ten (10) minute period, the state building administrator shall notify a state or local law enforcement agency that a child is lost or missing and provide the information then known about the lost or missing child. The law enforcement agency shall respond to the scene and shall take control of the incident. The law enforcement agency may request that the local search and rescue coordinator provide additional resources to search for the lost or missing child. The law enforcement agency and the local dispatch center shall take the actions required by KRS 17.450, 17.460, and 39F.180;

(10) Upon the location of the lost or missing child or the arrival of a peace officer from the law enforcement agency which was notified of the lost or missing child, whichever occurs earlier, the state building administrator shall cause an announcement of the ending of the "Code Adam" by the state building loudspeaker or other fast and effective means of communication; and

(11) Upon the ending of the "Code Adam," the state building administrator shall prepare three (3) copies of a report of the incident, which shall:

(a) Be sent within three (3) working days to the Secretary of the Finance and Administration Cabinet and the Commissioner of the Department of State Police; and

(b) Be kept in the administrative files of the state building for a period of three (3) years from the date of the incident.

SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

(1) The Secretary of the Finance and Administration Cabinet, in consultation with the Justice Cabinet through the Department of State Police, shall:

(a) Be responsible for coordinating implementation of the "Code Adam" program throughout the Commonwealth;

(b) Provide training to administrators of state buildings and employees designated by those administrators in the implementation of the "Code Adam" program;

(c) Provide training in procedures for the search of state buildings and grounds for lost and missing children;

(d) Print and distribute signs to each public agency for use in each state building relating to the "Code Adam" program and how to initiate a "Code Adam." The signs shall be not less than twelve (12)

inches square and have white letters and a purple background containing the information specified by the cabinet by administrative regulation;

(e) Provide for annually conducting a "Code Adam" drill at each facility covered by the provisions of Sections 1 to 4 of this Act;

(f) Provide for the collection of statistics from each facility covered by the provisions of Sections 1 to 4 of this Act on each "Code Adam" within the state building;

(g) Provide an annual report to the Governor, the Department of State Police, the Legislative Research Commission, and the General Assembly on each "Code Adam" within the Commonwealth during the previous calendar year and the results of each "Code Adam" incident. The annual report shall be a public record and shall not include the name or other identifying information, other than gender and age, of the child; and

(h) Promulgate administrative regulations necessary for the implementation of the "Code Adam" program as required by Sections 1 to 4 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The Secretary of the Finance and Administration Cabinet, in consultation with the Justice Cabinet through the Department of State Police, may exempt any agency or state building which, due to the nature of the services provided by that agency or state building, is not visited by children. The agency or state building shall immediately report to the Secretary of the Finance and Administration Cabinet when the agency or state building is likely to be visited by children on a frequent or continuing basis. Upon receipt of the notification from the state building administrator or agency that the state building is being visited by children, the exemption from compliance with the provisions of Sections 1 to 4 of this Act shall expire.

Approved March 31, 2004

CHAPTER 22

(SB 124)

AN ACT relating to school bus specifications.

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

Section 1. KRS 156.153 is amended to read as follows:

(1) All school buses for which bids are made or bid contracts awarded shall meet the standards and specifications of the Kentucky ***Department***~~[Board]~~ of Education. The term "school bus," as used in this section, shall mean any motor vehicle which meets the standards and specifications for school buses as provided by law or by the standards or specifications of the Kentucky ***Department***~~[Board]~~ of Education authorized by law and used solely in transporting school children and school employees to and from school under the supervision and control and at the direction of school authorities, and shall further include school bus accessory equipment and supplies and replacement equipment considered to be reasonably adaptable for purchase from price contract agreements.

(2)~~[All school buses manufactured prior to 1983 shall be equipped with exterior fender mounted front view and side view mirrors so as to meet the 1984 standards and specifications of the State Board for Elementary and Secondary Education.~~

~~(3)]~~ Except in cases of emergencies or for the transportation of students with disabilities, only school buses as defined in ***subsection***~~[subsections]~~ (1)~~[and (2)]~~ of this section shall be used for transporting students to and from school along regular bus routes. Districts may use district-owned vehicles that were designed and built by the manufacturer for passenger transportation when transporting nine (9) or fewer passengers, including the driver, for approved school activities. Vehicles used under this subsection shall be clearly marked as transporting students and shall be safety inspected no less than once every thirty (30) days.

Section 2. KRS 189.540 is amended to read as follows:

(1) The Kentucky Board of Education shall promulgate administrative regulations to govern the design and operation of all Kentucky school buses and to govern the operation of district-owned passenger vehicles

transporting students under KRS 156.153***(2)***~~[(3)]~~. The board shall, with the advice and aid of the Kentucky State Police and the Transportation Cabinet, enforce the administrative regulations governing the operation of all school buses whether owned by a school district or privately contracted and all district-owned passenger vehicles transporting students under KRS 156.153***(2)***~~[(3)]~~. The regulations covering the operation shall by reference be made a part of any contract with a school district. Every school district and private contractor referred to under this subsection shall be subject to those regulations.

(2) Any employee of any school district who violates any of the administrative regulations in any contract executed on behalf of a school district shall be subject to removal from office. Any person operating a school bus under contract with a school district who fails to comply with any of the administrative regulations shall be guilty of breach of contract and the contract shall be canceled after proper notice and a hearing by the responsible officers of such school district.

(3) Any person who operates a school bus shall be required to possess a commercial driver's license issued pursuant to KRS 281A.170.

Approved April 1, 2004

CHAPTER 23

(SB 132)

AN ACT relating to interior designers.

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

Section 1. KRS 323.410 is amended to read as follows:

(1) The board shall issue a certificate as a certified interior designer and a certificate number to any person who:

(a) Files an application with the board on a form prescribed by the board;

(b) Submits written proof that the person has successfully passed the NCIDQ examination and therefore has met the education and internship requirements established by NCIDQ;

(c) Meets the standards of education, experience, and testing established by the board under KRS 323.406(1); and

(d) Submits the required certification fee to the board.

(2) No person who has violated KRS 323.402 shall file an application with the board for a period of five (5) years.

(3) For a period of ***four (4)*** ~~[two (2)]~~ years after July 15, 2002, the board may issue a certificate as a certified interior designer and a certificate number to a person who does not meet the examination requirement under subsection (1)(b) of this section, but who can document:

(a) Ten (10) years of experience as an interior designer or eight (8) years of experience as an interior designer and two (2) years of interior design education that is acceptable to the board; and

(b) Successful completion of the Building and Barrier-Free Code Life Safety section of the NCIDQ examination.

(4) The board, upon proper application under this section, shall issue a certificate as a certified interior designer and a certificate number to a person credentialed as an interior designer under the laws of any other country or state or territory of the United States, provided that at the time the license or certificate was issued the applicant met the requirements of subsection (1) of this section.

Approved April 1, 2004

CHAPTER 24

(SB 177)

AN ACT relating to insurance accounting practices and procedures.

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

Section 1. KRS 304.2-065 is amended to read as follows:

(1) There is created within the Department of Insurance the position of early warning analyst.

(2) The commissioner shall appoint a qualified person to serve as early warning analyst.

(3) The early warning analyst shall detect domiciled companies and companies doing a significant amount of business in the Commonwealth that are in a hazardous or potentially hazardous financial condition.

(4) The early warning analyst shall be part of the Financial Standards and Examination Division.

(5) The early warning analyst shall:

(a) Take advantage of the information available through the Insurance Regulatory Information System and use the information to monitor insurers;

(b) Seek information from other states' detection programs;

(c) Work with other Department of Insurance employees representing key regulatory areas of the department;

(d) Coordinate and develop the use of an indicator list to determine if an insurer is in a hazardous condition. The indicator list shall include but is not limited to the following indicators:

1. An insurer fails to file a timely financial statement as established in KRS Chapter 304;

2. An insurer files financial information which is false or misleading;

3. An insurer overstates its surplus by twenty-five percent (25%) or more;

4. An insurer fails to grant authorization to amend its financial statement when requested;

5. An insurer's financial ratios are outside of the usual range established by the National Association of Insurance Commissioners in the Insurance Regulatory Information System;

6. A projection by the department of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next twelve (12) months;

7. An insurer's aggregate net retained risk, direct or assumed, under any one (1) insurance policy or certificate of insurance under a group policy is more than ten percent (10%) of the insurer's surplus, except where otherwise permitted by law;

8. An insurer's reserves for losses and loss adjustment expenses are discounted more than ten percent (10%) of the surplus;

9. An affiliate or subsidiary of an insurer is unable to pay its obligations as the obligations become due and payable;

10. A life, accident, and health insurer has premium writings that result in the surplus being less than five percent (5%) of the aggregate general account reserves for the life insurance in force plus twenty-five percent (25%) of the new annualized accident and health premium writing;

11. An insurer has reinsurance reserve credits, recoverable or receivable, that are disputed by the reinsurer, or are due and payable and remain unpaid, and the reinsurance credits, recoverables, and receivables are more than ten percent (10%) of an insurer's surplus;

12. An insurer consistently issues subordinate premium or surplus debentures to finance its operations;

13. An insurer fails to adequately maintain books and records in a manner that permits examiners to determine the financial condition of the insurer;

14. An insurer has reinsurance agreements affecting twenty percent (20%) or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the Commonwealth of Kentucky;

15. An insurer's management does not have the experience, competence, or trustworthiness to operate the insurer in a safe and sound manner;

16. An insurer's management engages in unlawful transactions;

17. An insurer fails to have an appraisal made on real estate upon which the insurer has made a mortgage loan;

18. An insurer fails to comply with the terms of an agreement with an affiliate;

19. An insurer has a pattern of refusing to settle valid claims within a reasonable time after due proof of the loss has been received;

20. An insurer fails to follow a policy on rating and underwriting standards appropriate to the risk;

21. An insurer violates KRS Chapter 304;

22. A final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer; and

23. An insurer is in any condition that the commissioner finds is a hazard to policyholders, creditors, or the general public;

(e) Recommend regulatory action and provide status reports to the commissioner; and

(f) Appear before the Interim Joint Committee on Banking and Insurance or the Standing Committees on Banking and Insurance ***annually***~~[biannually]~~ to report on the status of domestic insurance companies and insurance companies doing a substantial amount of business in the Commonwealth of Kentucky.

Section 2. KRS 304.2-080 is amended to read as follows:

(1) The commissioner or any deputy, examiner, actuary, assistant or employee of the department, shall not be connected with the management of, or be financially interested, directly or indirectly, in any insurer, insurance agency or broker, or insurance transaction except as policyholder or claimant under a policy; except, that as to matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, examiners, accountants, attorneys, or other technicians who are independently practicing their profession even though from time to time similarly employed or retained by insurers or others.

(2) No person shall directly or indirectly give or pay to the commissioner or any deputy, examiner, actuary, assistant, employee or technician retained by the department; and the commissioner, or any deputy, examiner, actuary, assistant, employee or technician retained by the department, shall not directly or indirectly receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, or by contract with the commissioner, for any service rendered or to be rendered, as such commissioner, deputy, examiner, actuary, assistant, employee or technician, or in connection therewith.

(3) Subsection (1) of this section shall not be deemed to prohibit receipt by any such person of commissions or retirement benefits to which entitled by reason of services performed prior to becoming commissioner or prior to employment by the commissioner.

~~[(4) This section shall not be deemed to prohibit appointment and functioning of the commissioner as process agent of insurers or of nonresident licensees as provided for in this code.]~~

Section 3. KRS 304.2-300 is amended to read as follows:

(1) There is created in the State Treasury the "Examination Expense Revolving Fund" for the use of the department. The commissioner shall promptly deposit all funds received under a statute requiring examination expenses to be paid by the party examined and deposited with the State Treasurer to the credit of ***the***~~[such]~~ fund.

(2) Moneys for travel, per diem, compensation and other necessary and authorized expenses incurred by an examiner or other department representative in the examination of any person required to pay, and making payment of, the expense of examination pursuant to KRS 304.2-290 shall be paid out of the examination expense revolving fund, upon approval of the commissioner.

(3) Moneys for travel~~[, compensation]~~ and other necessary expenses~~[of the custodian of insurance securities]~~ assessed pursuant to KRS 304.8-190 shall be paid out of the examination expense revolving fund upon approval of the commissioner.

(4) If any amount in ***the***~~[such]~~ revolving fund remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account and may be used during the succeeding year or years.

Section 4. KRS 304.2-360 is amended to read as follows:

(1) In the conduct of hearings under this code and making ***a***~~[his]~~ final order thereon, the commissioner shall act in a quasijudicial capacity and in accordance with the provisions of this chapter and KRS Chapter 13B.

(2) With respect to hearings held concerning merger, consolidation, bulk reinsurance, conversion, affiliation, or change of control of a domestic insurer as provided in Subtitle 24, or in Subtitle ***37***~~[27]~~ of this chapter, where notice of the hearing was given to all stockholders and policyholders or to all stockholders of an insurer involved, the commissioner is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.

(3) A final order may require that restitution be made to any person aggrieved by a violation of any provisions of this chapter, any statute administered by the commissioner, or any regulation of the commissioner.

(4) An order prepared by the commissioner's designee and approved in writing by the commissioner shall be considered the commissioner's order.

Section 5. KRS 304.3-110 is amended to read as follows:

An insurer which otherwise qualifies therefor may be authorized to transact any one (1) kind or any combination of kinds of insurance as defined in Subtitle 5, except:

(1) A life insurer may grant annuities and may be authorized to transact in addition only health insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 18, 1970, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and health and annuities. ***Only an insurer with a certificate of authority authorized to sell life insurance may grant and issue annuity contracts.***

(2) A reciprocal or Lloyd's insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer, and shall not transact any other kind of insurance.

(4) A mortgage guaranty insurer shall be a stock insurer, and shall not transact any other kind of insurance.

Section 6. KRS 304.3-150 is amended to read as follows:

To apply for an original certificate of authority an insurer shall file with the commissioner its written application therefor on forms as prescribed and furnished by the commissioner, accompanied by the applicable fees specified in Subtitle 4, stating under the oath of the president or vice-president or other chief officer and the secretary of the insurer, or of the attorney-in-fact (if a reciprocal insurer or Lloyd's plan insurer), the insurer's name, location of its principal office, the kinds of insurance to be transacted, date of organization or incorporation, form of organization, its domicile, and any additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of incorporation, currently certified by the public official with whom the originals are on file in a state or country.

(2) A copy of its bylaws, certified by the insurer's secretary.

(3) If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, and copy of its subscribers agreement, if any, both certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in KRS ***304.27-060***~~[304.2-060]~~.

(4) If a Lloyd's plan insurer, the names and addresses of all of the underwriters proposing to engage in the business, along with the number of underwriters which shall not be less than twenty-five (25), and that each underwriter is worth in his own right not less than twenty thousand dollars ($20,000) over and above all his

liabilities, along with a statement showing a list of all cash and invested assets owned by the associated underwriters and their value, certified and sworn to by their duly authorized attorney-in-fact.

(5) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state or country of domicile.

(6) A copy of the report of last examination of the insurer prior to the filing of the application, certified by the public insurance supervisory official of the insurer's state or country of domicile.

(7) If a foreign or alien insurer, the name and address of the person to whom the Secretary of State shall forward lawful process served upon him. If a domestic reciprocal insurer, the name and address of the attorney designated pursuant to paragraph (e) of subsection (2) of KRS 304.27-060 shall be deemed to be the person to whom the Secretary of State shall forward lawful process served upon him. Any judgment against a domestic reciprocal so served shall be binding upon each of the insurer's subscribers as their respective contingent liabilities.

(8) If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in a state or country the kinds of insurance proposed to be transacted in this state.

(9) If an alien insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140, and a copy of the trust deed, if any, pertaining to a deposit, certified by the trustee.

(10) If a foreign insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140.

(11)~~[If a life or health insurer, a copy of the insurer's rate book and of each form of policy currently proposed to be issued in this state, and of the form of application therefor.~~

~~(12)]~~ If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(12)~~[(13)]~~ Designation by the insurer of its officers or representatives authorized to appoint and remove its agents in this state.

(13)~~[(14)]~~ If to transact surety insurance, the names and addresses of all its attorneys in fact within this state together with the scope of authority of each attorney-in-fact.

Section 7. KRS 304.3-180 is amended to read as follows:

(1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the commissioner or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment~~[on or before March 1]~~ of the continuation fee provided in Subtitle 4 ***by March 1, or, if paid by mail, postmarked no later than March 1***;

(b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;

(c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and

(d) Due filing by domestic companies of quarterly statements as approved by the National Association of Insurance Commissioners.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) An insurer shall not use the same accountant or partner of an accounting firm responsible for preparing the ***audited financial statement for more than seven (7)*** ~~[report required by subsection (1) for more than four (4)]~~ consecutive years.

Section 8. KRS 304.3-240 is amended to read as follows:

(1) Each authorized insurer shall annually~~[, before the first day of March,]~~ file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 preceding. The statement shall be on forms prescribed by the National Association of Insurance Commissioners and shall be completed according to the instructions of the National Association of Insurance Commissioners, and shall be verified by the oaths of at least two (2) of the insurer's principal officers. The annual statement of a reciprocal insurer shall be made and verified by its attorney-in-fact. ***The annual statement shall be filed by March 1 of each year, or, if filed by mail, postmarked no later than March 1. The annual statement of a foreign or alien insurer may be executed or verified by facsimile or reproduced signature; however, the annual statement of a domestic insurer shall contain original signatures.***

(2) ~~[The commissioner shall annually during November furnish each insurer duplicate copies of annual statement forms as next required to be filed.]~~The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.

(3) The annual statement of an alien insurer shall relate only to its assets, transactions, and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(4) The commissioner may suspend or revoke the authority of any insurer failing to file its annual and quarterly statement when due or failing so to file during any extension of time therefor which the commissioner, for good cause, may grant.

(5) Notwithstanding the provisions of this section or any other law of this Commonwealth, an authorized insurer may, subject to the requirements of regulations adopted by the commissioner, publish financial statements or information based on financial statements prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the commissioner in compliance with this section. Such differing financial statements or information based on the financial statements shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless the provision specifically so requires.

Section 9. KRS 304.3-320 is amended to read as follows:

(1) Foreign insurers currently admitted to do the business of life and health insurance in Kentucky and foreign insurers hereafter admitted to do the business of life and health insurance in Kentucky which are domiciled in states which have no life and health insurance guaranty association or similar guaranty fund in operation may be required by the commissioner, in order to protect Kentucky policyholders, to ***furnish to the commissioner a*** deposit ***of cash or*** ~~[with the custodian of insurance securities]~~ publicly-traded securities having a market value of not less than one hundred thousand dollars ($100,000) nor more than one million dollars ($1,000,000).

(2) In establishing the amount of the deposit required by subsection (1) of this section for a particular insurer, the commissioner shall consider the following factors:

(a) The amount of Kentucky writings;

(b) The amount of policy reserves and claim reserves pertaining to Kentucky risks;

(c) The kind of insurance written in Kentucky;

(d) The current financial and operating test results of the insurer provided by the National Association of Insurance Commissioners under its insurance regulatory information system; and

(e) Any other relevant financial data.

SECTION 10. A NEW SECTION OF SUBTITLE 6 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

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

(1) "Accounting practices and procedures manual" means the accounting practices and procedures manual, as amended, published by the National Association of Insurance Commissioners; and

(2) "SSAP" means the statements of statutory accounting principles in the accounting practices and procedures manual.

Section 11. KRS 304.6-010 is amended to read as follows:

(1) In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(a) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(b) Investments, securities, properties and loans acquired or held in accordance with this code and in connection therewith the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stocks and shares, unless such amount has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.

4. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

5. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal***. Collectible interest one hundred eighty (180) days past due on a mortgage loan in default is a nonadmitted***~~[; but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an]~~ asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(c) Premium notes, policy loans, and other policy assets and liens on policies of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the ***policy reserves or cash surrender value***~~[legal reserve and other policy liabilities carried on each individual policy]~~.

(d) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held.

(e) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. ***To the extent that there is no related unearned premium, any uncollected premium balances which are over ninety (90) days due shall be nonadmitted. The uncollected agent's receivable on a policy basis which is over ninety (90) days due shall be nonadmitted regardless of any unearned premium***~~[The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities]~~.

(f) Installment premiums other than life insurance premiums to the extent of the policy reserve carried on the policy to which premiums apply. ***If an installment premium is past due, the amount over ninety (90) days due plus all future installments that have been recorded on that policy shall be nonadmitted.***

(g) ***Bills receivable***~~[Notes and like written obligations not past due, taken]~~ for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the policy reserve carried thereon. ***Bills receivable shall be nonadmitted if either of the following conditions are present:***

1. If an installment premium is over ninety (90) days due, the entire bill's receivable balance from that policy shall be nonadmitted; or

2. If the bill's receivable balance due exceeds the policy's unearned premium, the amount in excess of the unearned premium is nonadmitted.

(h) The full amount of reinsurance recoverable ***on paid losses and loss adjustment expense*** by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under KRS 304.5-140.

(i) ***Funds held or deposited with reinsured companies, whether premiums withheld as security for unearned premium and outstanding loss reserves or advances for loss payments, are admitted assets provided they do not exceed the liabilities they secure and provided the reinsured is solvent. Any funds in excess of the liabilities, and any funds held by an insolvent reinsured, shall be nonadmitted***~~[Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty]~~.

(j) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by ***the commissioner***~~[him]~~.

(k) As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.

(l) Electronic ***data processing equipment and operating software are admitted assets to the extent they conform to the requirements of SSAP No. 4. Electronic data processing equipment and software shall be depreciated for a period not to exceed three (3) years using methods detailed in SSAP No. 19. The aggregate value of admitted electronic data processing equipment and operating system software (net of accumulated depreciation) shall be limited to three percent (3%) of the reporting entity's capital and surplus on the statutory balance sheet for its most recently filed statement with its domicilary state commissioner, adjusted to exclude electronic data processing equipment and operating system software, net deferred tax assets, and net positive goodwill.***

(m) A collateral loan or unconditional obligation for the payment of money secured by the pledge of an investment to the extent it conforms to the requirements of SSAP No. 4. The outstanding principal balance on the loan and any related accrued interest shall be recorded as an admitted asset subject to the following limitations:

1. A collateral loan determined to be impaired shall be an admitted asset equal to the fair market value of the collateral less estimated costs to obtain and sell the collateral. The difference between the net fair value of the collateral and the amount of the collateral loan shall be written off in accordance with SSAP No. 5.

2. A collateral loan secured by an asset that does not qualify as an investment shall be nonadmitted.

3. A collateral loan that exceeds the fair market value of the collateral shall be an admitted asset equal to the fair market value of the collateral. The excess shall be classified as a nonadmitted asset.

(n) Deferred tax assets as defined in SSAP No. 10.

(o) Receivable for securities as defined in SSAP No. 21.

(p) Guaranteed investment contracts as defined in SSAP No. 21.

(q) Cash value of life insurance where the reporting entity is owner and beneficiary as defined in SSAP No. 21.

(r) Other amounts receivable under reinsurance contracts as defined in SSAP No. 21.

(s) State guarantee association promissory notes.

(t)~~[and mechanical machines and related equipment constituting a data processing, record keeping, or accounting system or systems if the cost of each such system, including additions thereto is at least one hundred thousand dollars ($100,000), which cost shall be amortized in full over a period not to exceed ten (10) years. The aggregate amount invested in all such systems shall not exceed five percent (5%) of the insurer's assets.~~

~~(m)~~ All assets~~[, whether or not consistent with the provisions of this section,]~~ as may be allowed pursuant to the ***accounting practices and procedures manual*** ~~[annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein]~~.

(u) ~~[(n)]~~ Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by ***the commissioner*** ~~[him]~~.

(2) Admitted assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to such insurer as prescribed by the commissioner, or otherwise in his discretion. The commissioner may make official regulations prescribing the application of the provisions of this section.

Section 12. KRS 304.6-020 is amended to read as follows:

The following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Good will, trade names, and other like intangible assets, except as expressly permitted and as prescribed by the National Association of Insurance Commissioners' accounting practices and procedures;

(2) Advances to officers or directors (other than policy loans) whether secured or not, and advances to employees, agents and other persons on personal security only;

(3) Stock of such insurer, owned by it, or loans secured thereby. Any such stock owned by such insurer shall be held as treasury stock and be deducted from the total issue of outstanding shares;

(4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies***. The following assets are not excluded assets under this subsection:***

(a) ~~[(other than]~~Equipment authorized under subsection (1) of KRS 304.6-010***;***

(b) ***For*** ~~[, except in the case of]~~ title insurers***,*** such materials and plants as the insurer is expressly authorized to invest in under paragraph (k) of subsection (1) of KRS 304.6-010***;***

(c) ~~[and except, in the case of an insurer,]~~Such personal property as the insurer is permitted to hold pursuant to Subtitle 7 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer, other than real estate used by it for home office, branch office, and similar purposes; and

(d) For health reporting entities, furniture, medical equipment, fixtures, and leasehold improvements used for the direct delivery of health care services;

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code***;***

(6) Due and accrued investment income determined to be uncollectible in accordance with SSAP No. 5;

(7) Due and accrued investment interest determined to be uncollectible in accordance with SSAP No. 5;

(8) Nonoperating system software;

(9) Leasehold improvements that do not meet the definition of assets set forth in SSAP No. 4;

(10) Deposits in suspended depositories;

(11) Receivables determined to be uncollectible or otherwise impaired in accordance with SSAP No. 5;

(12) Automobiles, airplanes, and other vehicles;

(13) A loan receivable and accrued interest, if collateralized by the reporting entity's own stock;

(14) Prepaid expenses; and

(15) Any other asset that does not meet the definition of an asset, or has been specifically identified as a nonadmitted asset in the accounting practices and procedures manual.

Section 13. KRS 304.6-040 is amended to read as follows:

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any, less the amount of shares held by the insurer as treasury stock as provided in subsection (3) of KRS 304.6-020.

(2) The amount, estimated consistent with the provisions of Subtitle 6, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

(3) With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:

(a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to KRS 304.6-130 to 304.6-180, inclusive.

(b) Reserves for disability benefits, for both active and disabled lives required by paragraph (e) of subsection (2) of KRS 304.6-140.

(c) Reserves for accidental death benefits, required by paragraph (f) of subsection (2) of KRS 304.6-140.

(d) Any additional reserves which may be required by the commissioner consistent with applicable customary and general practice in insurance accounting as set forth in regulations promulgated by the commissioner but no such additional reserve shall be required of any company solely for contingent liabilities which may arise under any agreement, filed with and approved by the commissioner, for the assumption of liability by the company growing out of the acts of its exclusive agents within the course and scope of their representation.

(4) Reserves for health insurance required by KRS 304.6-070.

(5) With reference to insurance other than specified in subsections (3) and (4) of this section, and other than title insurance, the amount of the policy reserves computed in accordance with Subtitle 6.

(6) Taxes, expenses and other obligations due or accrued at the date of the statement.

(7) Deferred tax liabilities as defined in SSAP No. 10.

Section 14. KRS 304.6-050 is amended to read as follows:

(1) As to property, casualty, surety and mortgage guaranty insurance the insurer shall maintain an unearned premium reserve on all policies in force.

(2) Except as provided in KRS 304.6-060 as to marine and transportation risks and in subsection (3) of this section the unearned premium reserve shall be computed, after deduction of applicable reinsurance in solvent insurers, at the insurer's election either:

(a) ***On a daily pro rata method basis on each item of premium;*** ~~[As equal to not less than fifty percent (50%) of the annual premiums in force,]~~ or

(b) On a monthly~~[or more frequent]~~ pro rata basis as to all such reserves.

(3) As to mortgage guaranty insurers, premiums on risks written for one (1) year or less must be reserved on a monthly pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without the approval of the insurance supervisory official of the insurer's domicile.

Section 15. KRS 304.6-090 is amended to read as follows:

For the protection of the ***policyholders against loss during periods of extreme economic contraction*** ~~[people of this Commonwealth and for the purpose of protecting against the effect of adverse economic cycles]~~, each mortgage guaranty insurer shall ***maintain a liability referred to as a statutory contingency reserve. The statutory contingency reserve shall be a separate fund, in addition to the mortgage guaranty insurer's unearned premium reserve.*** ~~[establish a contingency reserve which shall be maintained for one hundred eighty (180) months. To provide for this,]~~ The insurer shall annually contribute fifty percent (50%) of the earned premiums ***from mortgage guaranty insurance contracts*** to this ***liability, which shall be maintained for ten (10) years regardless of the coverage period for which premiums were paid.*** ~~[reserve. The earned premiums so reserved may be released, annually, after the specified time of one hundred eighty (180) months has elapsed. However,]~~ Subject to the approval of the

commissioner, ***the contingency*** ~~[this]~~ reserve may be ***released in any year in which actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums. Any reductions shall be made on a first-in, first-out basis. Changes in the reserve shall be recorded directly to unassigned funds*** ~~[available only for loss payments, when the loss ratio (incurred losses to premiums earned) exceeds twenty percent (20%). This amount so used shall reduce the next subsequent annual release to surplus from the established contingency reserve]~~.

Section 16. KRS 304.6-100 is amended to read as follows:

(1) As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable, and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the commissioner, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.

(2) Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the commissioner may require the insurer to maintain additional reserves.

(3)~~[The minimum reserve requirements prescribed by the commissioner for unpaid losses and loss expenses incurred during each of the most recent three (3) years for coverages included in the lines of business described in the insurer's annual statement as workers' compensation, liability other than auto (B.I.), and auto liability (B.I.) shall not be less than the following: for workers' compensation, sixty five percent (65%) of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year; for liability other than auto (B.I.) and auto liability (B.I.), sixty percent (60%) of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year.~~

~~(4)]~~ The commissioner may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

Section 17. KRS 304.6-180 is amended to read as follows:

(1) If in any contract year the gross premium charged by any life insurer on any policy or contract, which is subject to subsection (2) of KRS 304.6-140, is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in KRS 304.6-140 and 304.6-145. Provided that for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in KRS 304.6-150, ignoring the second subsection of that section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with KRS 304.6-150, including the second subsection of that section, and the minimum reserve calculated in accordance with this section.

(2) When the anticipated losses, loss adjustment expenses, commissions, and the acquisition costs, and maintenance costs exceed the recorded unearned premium reserve, and any future installment premiums on existing policies, a premium deficiency reserve shall be recognized by a property and casualty insurer by recording an additional liability for the deficiency, with a corresponding charge to operations. Commission and other acquisition costs need not be considered in the premium deficiency analysis to the extent they have previously been expensed. For purposes of determining if a premium deficiency exists, insurance contracts shall be grouped in a manner consistent with how policies are marketed, serviced, and measured. A liability shall be recognized for each grouping where a premium deficiency is indicated. Deficiencies shall not be offset by anticipated profits in other policy groupings. If a premium deficiency reserve is established, disclosure of the amount of that reserve shall be made in the financial statements. If a

reporting entity utilizes anticipated investment income as a factor in the premium deficiency calculation, disclosure of this shall be made in the financial statements.

(3) When the anticipated losses, loss adjustment expenses, commissions and other acquisition costs, and maintenance costs exceed the recorded unearned premium reserve, contingency reserve, and the estimated future renewal premium on existing policies, a mortgage guaranty insurer shall recognize a premium deficiency reserve by recording an additional liability for the deficiency with a corresponding charge to operations. Commissions and other acquisition costs need not be considered in the premium deficiency analysis to the extent they have been expensed. If a mortgage guaranty insurer utilizes anticipated investment income as a factor in the premium deficiency calculation, disclosure of this shall be made in the financial statements.

(4) When the expected claims payments or incurred costs, claim adjustment expenses and administration costs exceed the premiums to be collected for the remainder of a contract period, an individual or group accident and health insurer or health maintenance organization shall recognize a premium deficiency reserve by recording an additional liability for the deficiency, with a corresponding charge to operations. For purposes of determining if a premium deficiency exists, contracts shall be grouped in a manner consistent with how policies are marketed, serviced, and measured. A liability shall be recognized for each grouping where a premium deficiency is indicated. Deficiencies shall not be offset by anticipated profits in other policy groupings. Such accruals shall be made for any loss contracts, even if the contract period has not yet started.

Section 18. KRS 304.8-010 is amended to read as follows:

(1) All deposits of assets of insurers required or permitted under this code and made in this state shall be made and maintained with the ***commissioner.*** ~~[custodian of insurance securities of this state, hereinafter called "custodian."]~~

(2) In addition to deposits required for an insurer's authority to transact insurance in this state, an insurer may deposit and maintain with the ***commissioner*** ~~[custodian]~~ deposit of assets:

(a) Required of an insurer by the laws of other states as prerequisite for authority to transact insurance in such other states.

(b) Required by application of the retaliatory provision, KRS 304.3-270.

(c) In such additional amounts as is permitted by this subtitle, or as expressly required by this code.

Section 19. KRS 304.8-020 is amended to read as follows:

(1) All ~~[such]~~ deposits shall be held by the ***commissioner*** ~~[custodian]~~ in trust for the benefit and protection of all of the insurer's policyholders and creditors in the United States.

(2) The deposit of a domestic insurer shall further be security for payment of taxes, assessments, forfeitures, fines, or other charges due and unpaid to this state or any other state in which the insurer has been authorized to transact insurance, and may be applied to ***the*** ~~[such]~~ extent as may be necessary for ~~[such]~~ payment.

(3) Except, that deposits required pursuant to the retaliatory provision, KRS 304.3-270, or required of a domestic insurer pursuant to the laws of another state, may be limited to ***the*** ~~[such]~~ uses and purposes as ***are*** ~~[is]~~ consistent with ***the*** ~~[such]~~ provision or laws. But no ~~[such]~~ deposit so required of a domestic insurer shall be allowed in lieu of or as a credit upon any deposit required of ***an*** ~~[such]~~ insurer under this subtitle if the purpose of ***the*** ~~[such]~~ deposit so required by another state is materially inconsistent with the purpose stated in subsection (1) of this section.

Section 20. KRS 304.8-040 is amended to read as follows:

(1) The commissioner may accept the home office real property of a domestic insurer as a part of any deposit of assets required of the insurer under this code. For ***this*** ~~[such]~~ purpose the insurer shall convey such real property by deed to the commissioner, and the deed shall be duly recorded and deposited with the ***commissioner*** ~~[custodian]~~.

(2) Real property so deposited shall not be sold or further encumbered by the insurer except upon advance approval of the commissioner after full submission of the purposes and detail of ***the*** ~~[any such]~~ sale or encumbrance to the commissioner. The commissioner shall join in the execution of any deed or other document

required to consummate ***the***~~[such]~~ sale or encumbrance. Upon any ***the***~~[such]~~ sale or encumbrance the insurer shall deposit other assets in lieu of such real property.

(3) ***This***~~[Such]~~ real property shall be valued at its fair value as determined by the commissioner.

Section 21. KRS 304.8-090 is amended to read as follows:

(1) The commissioner shall designate at least one (1) ***bank***~~[but not more than five (5) banks]~~ or trust ***company***~~[companies]~~ in each county of this state containing a city of the first class or a consolidated local government and such other banks as proposed by the insurer and approved by the commissioner ***which***~~[whose]~~ vaults shall be used as depositories for assets of insurers deposited under this code.

(2) ***Any expense associated with***~~[Each insurer]~~ depositing assets ***under this chapter*** shall ***be borne by the insurer***~~[, at its own expense, rent space therefor in the vaults of the banks or trust companies so designated]~~.

Section 22. KRS 304.8-095 is amended to read as follows:

Notwithstanding any other provision of law, the commissioner may cause any or all deposits of assets of insurers required or permitted under this code and maintained in this state to be made and maintained in trust with depositories designated pursuant to KRS 304.8-090(1) under trust agreements to which~~[such]~~ depositories, insurers, and the commissioner are parties, for the purpose of this subtitle. ***These***~~[Such]~~ trust agreements shall provide with respect to deposits thereunder provisions, conditions and stipulations corresponding to those applicable to other deposits under this subtitle and shall require ~~[such]~~depositories to perform the same duties with respect to deposits thereunder as the ***commissioner***~~[custodian of insurance securities]~~ is required to perform with respect to other deposits under the subtitle. Insurers who have made deposits under ***these***~~[such]~~ trust agreements shall be relieved of all other obligations under this subtitle with respect to the assets deposited thereunder.

Section 23. KRS 304.8-100 is amended to read as follows:

As to each insurer making or having a deposit the commissioner~~[and custodian]~~ shall keep a complete record thereof showing:

(1) The particular assets so deposited.

(2) The face value, if any, of any~~[such]~~ asset, and the value thereof as determined by the commissioner.

(3) Date of deposit, and place thereof.

(4) Assets withdrawn, date thereof, value of assets so withdrawn, and the name and address of any person to whom ***the***~~[such]~~ assets were delivered.

(5) ***All***~~[Such]~~ other information as the commissioner deems necessary.

Section 24. KRS 304.8-110 is amended to read as follows:

(1) The commissioner may at any time inventory assets on deposit as to any insurer. Upon request of the insurer the commissioner shall make~~[such]~~ an inventory at the insurer's expense, and shall furnish the insurer a copy thereof. All inventories shall be made in the presence of the commissioner and two (2) representatives of the insurer designated for the purpose by its board of directors.

(2) Upon request, the ***commissioner***~~[custodian]~~ shall give to any insurer depositing assets a certificate thereof describing the assets and setting forth their par value, if any, and their value, which valuation shall be ***determined by***~~[subject to the approval of]~~ the commissioner.

Section 25. KRS 304.8-150 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, every domestic life insurer shall, within ninety (90) days after the net cash value of each policy in force has been ascertained as required by law, deposit with the ***commissioner***~~[custodian of insurance securities]~~ for the security and benefit of its policyholders, assets in an amount which, together with ***the***~~[such]~~ sums as may be deposited by it with other states and governments by the requirements of their laws, shall be not less than the ascertained valuation of all policies in force less any sums that it has advanced from its legal reserve to its policyholders on the pledge to it of their policies and any accumulations thereon.

(2) If the legal reserve or the aggregate ascertained valuation of all policies in force in any domestic life insurer equals $20,000,000, no further deposit shall be required of the insurer so long as the legal reserve remains at or above $20,000,000, unless the insurer elects to represent on its policies or otherwise that the legal reserve or

cash value of its policies thereafter written is on deposit with this state or one or more of its designated agencies, in which event the insurer shall deposit assets as above set out in an amount equal to the ascertained valuation of all of its policies in force at the time the representation is made.

Section 26. KRS 304.8-170 is amended to read as follows:

(1) Any~~[such]~~ required deposit shall be released, in addition to circumstances already provided for, in these instances only:

(a) Upon extinguishment of substantially all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

(b) If ***the***~~[such]~~ deposit is no longer required under this code.

(c) If the deposit was made pursuant to the retaliatory provision, KRS 304.3-270, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer.

(2) No~~[such]~~ release shall be made except on application to and written order of the commissioner made upon proof satisfactory to ***the commissioner***~~[him]~~ of the existence of one of ***the***~~[such]~~ grounds therefor.~~[The custodian shall release the deposit upon such order of the commissioner.]~~ The commissioner shall not have any personal liability for any such release of any deposit or part thereof so ordered by ***the commissioner***~~[him]~~ in good faith.

(3) All release of deposits or any part thereof shall be made to the person then entitled thereto upon proof of right satisfactory to the commissioner.

Section 27. KRS 304.8-180 is amended to read as follows:

(1)~~[Access shall not be had to the vaults wherein the assets are deposited, nor shall any such]~~Assets ***shall not*** be removed ***from the bank or trust company wherein the assets are deposited***~~[therefrom]~~, except upon the written order of at least two (2) officers authorized for the purpose by the insurer's board of directors or other governing body, which order must have been approved by the commissioner.

(2) The~~[vaults wherein assets are deposited shall be opened and]~~ assets ***shall be*** deposited or removed only in the joint presence of the ***commissioner***~~[custodian]~~ and two (2) representatives of the insurer authorized for the purpose by the insurer's board of directors or other governing body.

(3) Except, that~~[the vaults may be opened and]~~ assets ***may be*** deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the ***commissioner***~~[custodian]~~.

Section 28. KRS 304.8-190 is amended to read as follows:

(1) Insurers maintaining deposits of assets in this state under this subtitle, shall pay into the examination expense revolving fund as provided in Subtitle 2 of this chapter, moneys sufficient to pay travel,~~[compensation]~~ and other necessary expenses of the ***commissioner related to the maintenance, valuation, protection, or administration of the insurer's deposit***~~[custodian of insurance securities, through the office of the commissioner of insurance]~~.

(2) The portion of ***the***~~[such]~~ expense fund to be paid by each such insurer shall be in the same approximate proportion as the amount ***the***~~[such]~~ insurer had on deposit on December 31 of the preceding year bears to the total such deposits of all insurers as of December 31 of the preceding year. The commissioner shall assess each insurer for its proportionate share of ***the***~~[such]~~ expense fund. The minimum charge for each insurer shall be five dollars ($5).

Section 29. KRS 304.13-390 is amended to read as follows:

(1) ***If the state fire marshal gives notice to the Department of Insurance that any authorized insurer has failed to comply with the provisions of KRS 227.250, the commissioner may take appropriate action up to and including revoking or suspending the insurer's certificate of authority***~~[The commissioner shall ascertain as soon as practicable the annual fire loss in each municipality in the Commonwealth; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable the commissioner to classify the fire losses in each municipality in the Commonwealth, the causes thereof, and the amount of premiums collected~~

~~therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates for risks in each municipality in the Commonwealth as provided in this section.~~

~~(2) The commissioner shall compile for each municipality in Kentucky a list of the insured fire losses in excess of five hundred dollars ($500) per loss paid in that municipality for the preceding statistical year.~~

~~(3) The list shall include:~~

~~(a) The names of persons recovering insured losses;~~

~~(b) The addresses or locations where the losses occurred; and~~

~~(c) The amount paid by the insurance company on each loss.~~

~~(4) The commissioner shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year, either directly from such insurance companies or from such lawful rating organization or agency of which such insurance companies may be a member or subscriber.~~

~~(5) Each municipality shall examine its list to determine the losses actually occurring in its limits and shall make a report to the fire marshal, which report shall include:~~

~~(a) A list of the losses that occurred within the limits of the municipality;~~

~~(b) A list of the losses not occurring within the municipality; and~~

~~(c) Other evidence essential to establishing the losses in the municipality. The fire marshal shall transmit a copy of each municipality's report to the commissioner.~~

~~(6) The commissioner shall make such changes or corrections as he shall determine to be necessary in order to correct the list of insured fire losses paid in a particular municipality~~].

Section 30. KRS 304.24-300 is amended to read as follows:

(1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if public offering and sale is made of the loan securities, the insurer may pay the reasonable costs thereof approved by the commissioner.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid. ***A surplus note shall be reported as surplus and not as debt only if the surplus note contains the following provisions:***

(a) Subordination to policyholder;

(b) Subordination to claimant and beneficiary claims;

(c) Subordination to all other classes of creditors other than surplus note holders; and

(d) Interest payments and principal repayments require prior approval of the state of domicile.

(3) Any such loan shall be subject to the commissioner's approval. The insurer shall in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made unless approved in advance by the commissioner.

(5) This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, nor to loans secured by pledge or mortgage of assets.

Section 31. KRS 304.24-500 is amended to read as follows:

(1) The purpose of this section is to:

(a) Provide a means whereby any insurer organized under the laws of any other state may become a domestic insurer;

(b) Provide a means for any domestic insurer to transfer its domicile to another state; and

(c) Provide a means for the continuation of a certificate of authority and other approvals pertaining to any foreign insurer which transfers its corporate domicile to another state by merger, consolidation, or any other lawful method.

(2) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may***, upon approval of the commissioner,*** become a domestic insurer by complying with all of the requirements of this chapter relating to the organization and authorization of a domestic insurer of the same type and by designating its principal place of business at a place in this state. ***The*** ~~[Such]~~ a domestic insurer ***shall*** ~~[will]~~ be entitled to like certificates of authority to transact business in this state, and shall be subject to the authority and jurisdiction of this state.

(3) Any domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon ***the*** ~~[such a]~~ transfer ***the*** ~~[such an]~~ insurer shall cease to be a domestic insurer, and shall be authorized to transact insurance business in this state if qualified as a foreign insurer. The commissioner shall approve ***the*** ~~[any such]~~ proposed transfer unless ***the commissioner*** ~~[he]~~ shall determine ***the*** ~~[such]~~ transfer is not in the interest of the policyholders of this state.

(4) The certificate of authority, agents' appointments and licenses, rates, and other items which the commissioner allows, in ***the commissioner's*** ~~[his]~~ discretion, which are in existence at the time any insurer authorized to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or merger pursuant to KRS 271B.11-070, or any other lawful method, shall continue in full force and effect upon ***the*** ~~[such]~~ transfer if ***the*** ~~[such]~~ insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the insurer or its new location unless so ordered by the commissioner. Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner in writing of the details of the proposed transfer and shall file promptly appropriate amendments to corporate documents required to be filed with the commissioner.

(5) (a) Any insurer transferring its domicile in accordance with subsections (2) or (3) of this section shall file an application for redomestication and transfer of domicile with the commissioner. This transfer of domicile must be approved by order of the commissioner. If the commissioner does not approve the transfer of domicile, the applicant insurer may request a hearing in accordance with KRS 304.2-310(2)(b).

(b) An applicant filing to become a domestic insurer in accordance with subsection (2) of this section shall include a notice of transfer of domicile to the Secretary of State and the articles, amended articles, or restated articles of incorporation in compliance with KRS 271B.2-020.

(c) An application filed by a domestic insurer to transfer its domicile to another state in accordance with subsection (3) of this section shall include a copy of the order approving the redomestication issued by the new state of domicile.

Section 32. KRS 304.27-070 is amended to read as follows:

(1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, ***including those provided in Subtitles 2 and 3 of this chapter,*** for failure of the attorney to comply with any applicable provision of this code.

Section 33. KRS 304.28-070 is amended to read as follows:

Action on any policy or contract of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorney and the underwriters or any of them. In ***an***~~[such]~~ action, summons and process shall be served on either the ***Secretary of State as provided in KRS 304.3-230***~~[commissioner]~~ or on the attorney and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance on which the action is brought.

Section 34. KRS 304.29-281 is amended to read as follows:

Societies shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices~~[(1) The commissioner, or any person he may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, shall also be applicable to the examination of societies.~~

~~(2) The expense of each examination and of each valuation, including compensation and actual expense of examiners shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner]~~.

Section 35. KRS 304.30-060 is amended to read as follows:

(1) Every licensee shall maintain records of its premium finance transactions and the ~~[said]~~records shall be open to examination and investigation by the commissioner.~~[The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination. Any examination or any part of the examination of any organization subject to the provisions of Subtitle 30 of this chapter shall be made by the commissioner or by examiners designated by him and shall be at the expense of the organization examined as specified in Subtitle 2 of this chapter.]~~

(2) Every licensee shall preserve its records of~~[such]~~ premium finance transactions, including cards used in a card system, for at least ***five (5)***~~[three (3)]~~ years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.

(3) For the purpose of determining market conduct, business practices, financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with law, the commissioner shall examine the affairs, transactions, accounts, records and assets of each licensed premium finance company as often as reasonably necessary.

(4) Premium finance companies shall be subject to the provisions of KRS 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

SECTION 36. A NEW SECTION OF SUBTITLE 32 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) If the certificate of authority of a corporation is suspended, the corporation shall not, during the period of suspension, enroll any additional subscribers or members except newborn children or other newly acquired dependents of existing subscribers or members, and shall not engage in any advertising or solicitation whatsoever.

(2) If the certificate of authority of a corporation is revoked, the corporation shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the corporation. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit further operation of the corporation as the commissioner may find to be in the best interest of subscribers or members, to the end that subscribers or members will be afforded the greatest practical opportunity to obtain continuing coverage. If the commissioner permits further operation, the corporation shall continue to collect the dues and fees required of subscribers or members.

Section 37. KRS 304.32-030 is amended to read as follows:

(1) Any nonprofit corporation organized under the laws of this state for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby hospital care, medical-surgical care, dental care, and other health services are made available to persons who become subscribers to such plan or plans under a contract with the corporation, shall be subject to and be governed by the provisions of this subtitle, and shall be exempt from all other provisions of this code, except as~~[herein]~~ expressly provided in ***this subtitle***~~[KRS 304.32-270]~~, and no insurance law hereafter enacted shall be deemed to apply to ***these***~~[such]~~ corporations unless they be specifically referred to therein.

(2) Except as provided in KRS 304.32-300 to 304.32-320, the provisions of this subtitle shall not apply to any employer's self-insured health plan or service established and maintained solely for its members and their immediate families, or to any self-insured health plan or service established, maintained, and insured jointly by any employer and any labor organization or organizations.

Section 38. KRS 304.32-140 is amended to read as follows:

(1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars ($2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars ($2,000,000) but not exceeding ten million dollars ($10,000,000), plus one percent (1%) of income exceeding ten million dollars ($10,000,000); but in no event shall reserves be less than five hundred thousand dollars ($500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the ***commissioner***~~[custodian of insurance securities]~~ a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars ($500,000) nor more than one million five hundred thousand dollars ($1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars ($1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that ***the***~~[such a]~~ corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner. A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.

(2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the ***commissioner***~~[custodian of insurance securities]~~ and ***the***~~[such]~~ securities shall be negotiable securities.

(3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

Section 39. KRS 304.32-210 is amended to read as follows:

(1) Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practice~~[The commissioner, or any person authorized by him, shall have power to examine the financial condition, affairs, and management of any corporation subject to the provisions of this subtitle. He shall have free access to all the books, papers, and documents relating to the business of the corporation, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any corporation, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each corporation subject to the provisions of this subtitle at least once every four (4) years]~~.

(2) Each corporation subject to the provisions of this subtitle may own and invest or have invested any of its funds in its principal office building not to exceed an amount which would reduce its surplus, exclusive of the investment, below $50,000, unless approved by the commissioner.

Section 40. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

(1) Subtitle 1 -- Scope -- General Definitions and Provisions;

(2) Subtitle 2 -- Insurance Commissioner;

(3) Subtitle 7 -- Investments;

(4) Subtitle 8 -- Administration of Deposits;

(5) Subtitle 12 -- Trade Practices and Frauds;

(6) Subtitle 25 -- Continuity of Management;

(7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;

(8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;

(9) Subtitle 4 -- Fees and Taxes;

(10) Subtitle 99 -- Penalties;

(11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;

(12) Subtitle 17A -- Health Benefit Plans;

(13) Subtitle 17B -- Kentucky Access;~~[and]~~

(14) Subtitle 9 -- Agents, Consultants, Solicitors and Adjusters***; and***

(15) Subtitle 3 -- Authorization of Insurers and General Requirements.

Section 41. KRS 304.33-110 is amended to read as follows:

(1) Whenever the commissioner has reasonable cause to believe, and determines~~[, after a hearing held as prescribed in subsection (2) of this section,]~~ that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under this subtitle, he may make and serve upon the insurer and any other persons involved an emergency order in accordance with KRS 13B.125, other than seizure orders under KRS 304.33-120, as is reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground. If the emergency order is for a restoration of or addition to capital, it shall be carried out as provided in KRS 304.24-350.

(2) The commissioner may apply for and any court of general jurisdiction may grant, restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary to enforce an emergency order.

Section 42. KRS 304.38-120 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices~~[(1) The commissioner, or any person authorized by him, shall have power to examine the financial condition, affairs, and management of any organization subject to the provisions of this subtitle. He shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any organization, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each organization subject to the provisions of this subtitle at least once every three (3) years.~~

~~(2) Any examination, or any part of the examination of any organization subject to the provisions of this subtitle, shall be made by the commissioner or by examiners designated by him and shall be at the expense of the organization examined as specified in Subtitle 2 of this chapter~~].

Section 43. KRS 304.38-130 is amended to read as follows:

(1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this subtitle if ***the commissioner finds that any of the conditions exist for which the commissioner could suspend or revoke a certificate of authority as provided in Subtitles 2 and 3 of this chapter or if the commissioner***~~[he]~~ finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 ***or Subtitle 17A of this chapter***;

(c) The health maintenance organization does not provide or arrange for health care services as approved by the commissioner in KRS 304.38-050(1)(a);

(d) The certificate of need and licensure board certifies to the commissioner that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(g) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.

(2) ***If*** ~~[A certificate of authority shall be suspended or revoked only after compliance with the hearing procedures set out in Subtitle 2.~~

~~(3) When~~] the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of ***the*** ~~[such]~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(3) ~~[(4)]~~ ***If*** ~~[When]~~ the certificate of authority of a health maintenance organization is revoked, ***the*** ~~[such]~~ organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of ***the*** ~~[such]~~ organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit ***the*** ~~[such]~~ further operation of the organization as ***the commissioner*** ~~[he]~~ may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the commissioner permits such further operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

Section 44. KRS 304.38-170 is amended to read as follows:

(1) All applications, filings, and reports required under this subtitle shall be treated as public documents, except as otherwise provided for herein.

(2) The~~[insurance law and the]~~ nonprofit hospital, medical-surgical, dental, and health service corporation law of this state shall not be applicable to any health maintenance organization granted a certificate of authority under this subtitle. This provision does not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this subtitle.

Section 45. KRS 136.410 is amended to read as follows:

~~[(1)]~~Every bail bondsman doing business in this Commonwealth shall, on or before the first day of March of each year, return to the Revenue Cabinet a statement of all amounts paid to him or his representatives, as premiums for bail bonds written in the courts of this Commonwealth during the preceding calendar year, or since the last returns were made, and shall at the same time pay a tax of two dollars ($2) upon each one hundred dollars ($100) of such amounts paid to the bail bondsman or his representatives. Amounts received for reimbursement for expenses or court costs are not to be considered as premiums for the purposes of this section.

~~[(2) In addition to the requirements of subsection (1) of this section, a copy of the statement of all amounts paid to the bail bondsman or his representatives, whether designated as premiums or otherwise, shall be filed with the commissioner of insurance at the same time the bail bondsman files his report of assets and liabilities as required by KRS 304.34-050(1).]~~

Section 46. KRS 304.2-195 is amended to read as follows:

(1) The commissioner may enter into interstate compacts for issuing certificates of authority to insurers if the commissioner determines that:

(a) Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or

(b) The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.

(2) In lieu of the documents required in KRS 304.3-150~~[(1) to (14)]~~ to be filed with an application for certificate of authority, the commissioner may accept documentation in accordance with the terms of the interstate compact.

(3) The commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

Section 47. KRS 431.510 is amended to read as follows:

(1) It shall be unlawful for any person to engage in the business of bail bondsman as defined in ***subsection (3) of this section***~~[KRS 304.34-010(1)]~~, or to otherwise for compensation or other consideration:

(a) Furnish bail or funds or property to serve as bail; or

(b) Make bonds or enter into undertakings as surety;

for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment or death, before any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.

(2) Nothing contained herein shall serve to release any bail bondsman heretofore licensed by this state from the obligation of undischarged bail bond liability existing on June 19, 1976.

(3) ***"Bail bondsman" shall mean any person, partnership or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death, before any of the courts of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof, and the business of a bail bondsman shall be limited to the acts, transactions and undertakings described in this subsection and to no other***~~[Within thirty (30) days from June 19, 1976, every bail bondsman heretofore licensed under Chapter 304, Subtitle 34, shall furnish to the commissioner of the Department of Insurance a certified copy of his daily bond register required by KRS 304.34-070, and the commissioner shall retain the securities of each bail bondsman deposited with the custodian of insurance securities until all undertakings shall have been paid and satisfied in full]~~.

(4) KRS 431.510 to 431.550 shall not be construed to limit or repeal KRS 431.021 or to prevent licensed insurers providing security required by Subtitle 39 of KRS Chapter 304 and nonprofit associations from posting or causing to be posted by licensed insurers security or acting as surety for their insureds or members for an offense arising from the operation of a motor vehicle, provided that such posting of security or acting as surety is merely incidental to the terms and conditions of an insurance contract or a membership agreement and provided further that no separate premium or charge therefor is required from the insureds or members.

Section 48. The following KRS sections are repealed:

304.8-060 Custodian of insurance securities.

304.8-070 Custodian's duties, bond.

304.13-043 Hearings on insurance for political subdivisions.

304.32-220 Examination expense.

304.32-230 Hearings -- Appeal.

304.34-010 Definitions for KRS 304.34-020 to 304.34-140.

304.34-020 Commissioner's power to regulate and enforce -- Application for license.

304.34-030 Bail bondsman's license required.

304.34-040 Security required of bondsmen.

304.34-042 Return of securities deposited by bail bondsman.

304.34-045 Filing of rate schedules required -- Premiums not to exceed approved rates.

304.34-050 Actions required of licensed bondsmen.

304.34-060 Affidavit as to consideration for bail bond.

304.34-070 Records required of bondsmen.

304.34-075 Semiannual reports by bondsmen -- Contents.

304.34-080 Actions prohibited to bondsmen -- Persons prohibited from being bondsmen.

304.34-090 Causes for failure to renew, suspension, or revocation of license.

304.34-100 Procedure on failure to renew, suspension, or revocation of license.

304.34-110 Provisions as to suspension or revocation.

304.34-120 Action on bondsman's license involves other insurance licenses.

304.34-130 Administrative penalties.

304.34-140 Permissible city ordinances.

304.34-160 Commissioner to notify clerks of licensed bondsmen's names, suspensions, revocations, reinstatements -- Clerk's reports.

304.99-030 Penalties for violation of bail bondsman licensing law.

Approved April 1, 2004

CHAPTER 25

(SB 181)

AN ACT relating to security interests.

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

Section 1. KRS 186.045 is amended to read as follows:

(1) A perfected security interest in a motor vehicle that has been satisfied by payment in full shall be deemed to have been discharged if one (1) or both of the following events has occurred:

(a) The funds to pay in full and discharge the security interest have been provided to the secured party in the form of a cashier's check, certified check, or wire transfer; or

(b) The debt has been paid to a secured party who is no longer in existence or has failed to file the necessary documents to discharge the lien.

(2) If payment in full has been made under subsection (1)(a) of this section, the discharge of the lien shall be made not later than ten (10) days from the receipt of the payment.

(3) When a security interest has been paid in full and a termination statement or discharge has not been filed, the debtor may petition the Circuit Court in the county of the debtor's residence to order the discharge of the security interest. The debtor shall present written evidence to the Circuit Court that the security interest has been paid in full. If the evidence presented to the Circuit Court proves to the court's satisfaction that the security interest has been paid in full, the court shall order the county clerk to note the termination on the title and to remove the lien from the Automated Vehicle Information System (AVIS). A copy of the court's order shall immediately be sent to the county clerk in the county where the security interest was originally filed and the county clerk shall discharge the security interest and remove the lien information from AVIS in accordance with the provisions of this section.

(4) Whenever a security interest has been discharged, other than by proceedings under Part 6 of Article 9 of KRS Chapter 355 or similar proceedings, the secured party shall deliver ***an authenticated*** ~~[a]~~ termination statement in the manner required by KRS 355.9-513 ***and 186A.195*** to the county clerk of the county in which the title lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Except as provided in subsection (3) of this section, within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing a security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall discharge the security interest by noting on the title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the title lien statement was removed. Termination statements shall be retained in the clerk's files for a period of two (2) years subsequent to the date of filing a statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.

(5) Upon presentation of an owner's title showing a security interest to the county clerk of a county where the termination statement was not delivered, the county clerk shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If a record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If a record of termination has not been entered into the automated system, the county clerk of the county other than where the termination statement was delivered shall not make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the title lien statement was submitted.

(6) Whenever any secured party repossesses a vehicle titled in Kentucky, for which a security interest is in existence at the time of repossession, and disposes of the vehicle pursuant to the provisions of KRS Chapter 355, he shall present, within fifteen (15) days after such disposition, an affidavit in a form prescribed by the department and a termination statement or proof that a termination statement has been filed. The new owner shall pay all applicable fees for titling and transferring the vehicle to the county clerk. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, shall be shown on the title issued by the clerk unless the prior secured party has discharged the security interest in the clerk's office or proof of termination is submitted, if the prior security interest was discharged in another clerk's office.

(7) Whenever any vehicle brought into Kentucky is required to be titled and the vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or title lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.

(8) The fees provided for in this section are in addition to any state fee provided for by law.

(9) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.

(10) The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner is responsible for ensuring that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 shall be obtained from the clerk by the owner of the vehicle.

(11) Security interests in vehicles sold to or owned by residents of other states shall be perfected in the state of the nonresident and repossession of the vehicle shall be taken pursuant to the laws of that state, unless:

(a) The vehicle is principally operated in Kentucky;

(b) The vehicle is properly titled in Kentucky under KRS Chapter 186A; and

(c) The security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

Approved April 1, 2004

CHAPTER 26

(SB 224)

AN ACT relating to underground storage tanks.

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

Section 1. KRS 224.60-130 is amended to read as follows:

(1) There is created within the Public Protection and Regulation Cabinet, Office of the Secretary, the Office of Petroleum Storage Tank Environmental Assurance Fund.

(2) The Office of Petroleum Storage Tank Environmental Assurance Fund shall:

(a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the office may distinguish between types, classes, and ages of petroleum storage tanks. The office may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the office for reimbursement from the fund for the performance of corrective action. At a minimum, the office shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the office shall obligate funds necessary to meet these requirements;

(b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The office may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the office on or before January 15, ***2008***~~[2004]~~. To insure cost effectiveness, the office shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the office may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;

(c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive

four-tenths of one cent ($0.004) from the one and four-tenths cent ($0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the office;

(d) Establish a small operator assistance account within the fund which may be used by the office to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;

(e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, ***2013*** ~~[2009]~~. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent ($0.01) from the one and four-tenths cent ($0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, ***2004*** ~~[2002]~~, the office shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The office shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the office shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;

(f) Hear complaints brought before the office regarding the payment of claims from the fund in accordance with KRS Chapter 13B;

(g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;

(h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the office, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The office shall, by administrative regulation, set the entry level for participation in the fund;

(i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;

(j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the office may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;

(k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be

contracted for or personnel may be employed as needed to implement the requirements of this paragraph;

(l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The office may collect soil or water samples or require storage tank owners or operators to split samples with the office for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the office to collect or split samples shall make the facility ineligible for fund participation;

(m) Have assurance fund auditors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the office schedule an assurance fund auditor to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an auditor fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the assurance fund no later than ten (10) days prior to the proposed date that an auditor is not available on the proposed date, in which event a representative of the assurance fund shall contact the operator and schedule a new date. If no auditor is present at the rescheduled date, the removal may then proceed without penalty; and

(n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter~~[or by July 15, 2010, whichever is earlier. Claims received after July 15, 2010, are not eligible for reimbursement]~~.

The funding and operations of the small operator assistance account and the small operator's tank removal account shall end on July 15, ***2008***~~[2004]~~.

(3) The office may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.

(4) The office may sue and be sued in its own name.

(5) The office may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The office may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (2)(c) of this section.

Section 2. KRS 224.60-142 is amended to read as follows:

(1) To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, ***2004***~~[2002]~~, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.

(2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ***2006***~~[2004]~~. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts through July 15, ***2006***~~[2004]~~.

Section 3. KRS 224.60-145 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.

(2) All deductions detailed in KRS 138.240(2), gasoline and special fuels sold for agricultural purposes, and special fuels sold exclusively to heat a personal residence are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.

(3) The fee shall be reported and paid to the Revenue Cabinet at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.

(4) The petroleum environmental assurance fee shall be set at one and four-tenths cent ($0.014) for each gallon. Four-tenths of a cent ($0.004) per gallon shall be deposited in the financial responsibility account and one cent ($0.01) shall be deposited in the petroleum storage tank account.

(5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year thereafter, the state budget director shall review the balance of each account to determine if a surplus exists. "Surplus" means funds in excess of the amounts necessary to satisfy the obligations in each account for all eligible facilities, to satisfy future liabilities and expenses necessary to operate each account, and to maintain an appropriate reserve in the financial responsibility account to demonstrate financial responsibility and compensate for third-party claims. The state budget director shall report the determination to the Interim Joint Committee on Appropriations and Revenue. After a determination that a surplus exists, the surplus shall be transferred to a restricted account and retained until appropriated by the General Assembly.

(6) All provisions of law related to the Revenue Cabinet's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.

(7) The Revenue Cabinet shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).

(8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606, 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142, and this section to the contrary, the small operator assistance account and small operator tank removal account established under KRS 224.60-130 shall continue in effect until July 15, ***2008*** ~~[2004]~~, and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.

Approved April 1, 2004

CHAPTER 27

(HB 7)

AN ACT relating to consumer protection.

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

SECTION 1. A NEW SECTION OF KRS 434.550 TO 434.730 IS CREATED TO READ AS FOLLOWS:

(1) No person shall use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(2) No person shall use a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

Section 2. KRS 434.560 is amended to read as follows:

As used in KRS 434.550 to 434.730, unless the context otherwise requires:

(1) "Automated banking device" means any machine which when properly activated by a credit card, debit card or personal identification code will perform any of the following services:

(a) Dispense money as a debit to the cardholder's savings or checking account; or

(b) Print the cardholder's savings or checking account balances on a statement; or

(c) Transfer funds between a cardholder's savings and checking account; or

(d) Accept payments on a cardholder's loan; or

(e) Dispense cash advances on an open end credit or a revolving charge agreement; or

(f) Accept deposits to a customer's savings or checking account; or

(g) Receive inquiries of verification of checks and dispense information which verifies that funds are available to cover said checks; or

(h) Cause money to be transferred electronically from a cardholder's account to an account held by any business, firm, retail merchant, corporation, or any other organization***;*** ~~[.]~~

(2) "Cardholder" means the person or organization named on the face of a credit or debit card to whom or for whose benefit the credit or debit card is issued by an issuer***;*** ~~[.]~~

(3) "Credit card" means any instrument or device, whether known as a credit card, credit plate, credit number or by any other name, issued by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit***;*** ~~[.]~~

(4) "Debit card" means any instrument or device, known by any name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services and anything else of value, payment of which is made against funds previously deposited by cardholder***;*** ~~[.]~~

(5) "E.F.T. system" means an electronic funds transfer system whereby funds are transferred electronically from a cardholder's account to any other account***;*** ~~[.]~~

(6) "Expired credit card" means a credit card which is no longer valid because the term shown on it has expired***;*** ~~[.]~~

(7) "Expired debit card" means a debit card which is no longer valid because the term shown on it has expired***;*** ~~[.]~~

(8) "Issuer" means the business organization or financial institution which issues a credit or debit card or its duly authorized agent***;*** ~~[.]~~

(9) ***"Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. "Merchant" also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;***

(10) "Participating party" means a business organization or financial institution, or any duly authorized agent of such business organization or financial institution, which is obligated by contract to acquire from a person, business organization or financial institution providing money, goods, services or anything else of value, a sales slip, sales draft or other instrument evidencing a credit or debit card transaction and from whom the issuer is obligated by contract to acquire or participate in such sales slip, sales draft or other instrument***;*** ~~[.]~~

(11) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(12) ~~[(10)]~~ "Presentation or presents" as used herein shall be construed to define those actions taken by a cardholder or any person to introduce a credit or debit card into an automated banking device or merely displaying or showing a credit or debit card to the issuer, a person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud***;*** ~~[.]~~

(13) ~~[(11)]~~ "Receives" or "receiving" means acquiring possession or control of a credit or debit card***;*** ~~[.]~~

(14) ~~[(12)]~~ ***"Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card;***

(15) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer***;*** ~~[.]~~

(16) ~~[(13)]~~ "Revoked debit card" means a debit card which is no longer valid because permission to use it has been suspended or terminated by the issuer***; and***

(17) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

Section 3. KRS 434.730 is amended to read as follows:

(1) A person who has violated KRS 434.590 shall be guilty of a Class A misdemeanor.

(2) A person who has violated KRS 434.600 shall be guilty of a Class D felony.

(3) A person who has violated the provisions of subsection (1) of Section 1 of this Act shall be guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(4) A person who has violated the provisions of subsection (2) of Section 1 of this Act shall be guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

Approved April 2, 2004

CHAPTER 28

(HB 19)

AN ACT relating to the insurance premium tax.

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

Section 1. KRS 91A.080 is amended to read as follows:

(1) The legislative body of each city, county, or urban-county government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose any such license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those city, county, or urban-county governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.

(2) Any license fee or tax imposed by a city, county, or urban-county government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the city, county, or urban-county government.

(3) Any license fee or tax imposed by a city, county, or urban-county government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the company within each calendar quarter on risks located within the corporate limits of the city, county, or urban-county government on those classes of business which the company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the city, county, or urban-county government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the city, county, or urban-county government. Any license fee or tax imposed upon premium receipts shall not include premiums received for insuring employers against liability for personal injuries to their employees, or the death of their employees, caused thereby, under the provisions of the Workers' Compensation Act.

(4) The Department of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the city, county or urban-county government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.

(5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the commissioner of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.

(6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Department of Insurance.

(7) Upon written request of the legislative body of any city, county, or urban-county government, at the expense of the requesting city, county, or urban-county government, which shall be paid in advance by the city, county, or urban-county government to the Department of Insurance, the Department of Insurance shall examine, or cause to be examined by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the examination shall be reported to the city, county, or urban-county government. Willful failure to properly collect and remit the fee or tax imposed by a city, county, or urban-county government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.

(8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurer shall furnish each city, county, or urban-county government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:

(a) Casualty;

(b) Automobile;

(c) Inland marine;

(d) Fire and allied perils;

(e) Health; and

(f) Life.

(9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the city, county, or urban-county government is separate of penalties provided for in subsection (7) of this section. No city, county, or urban-county government may impose any penalties other than those provided for in this subsection.

(10) No license fee or tax imposed under this section shall apply to premiums received on policies of group health insurance provided for state employees under KRS 18A.225.

(11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.

(12) (a) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990.

(b) If a county imposed and collected the license fee or tax authorized by this section before July 1, 2000, then insurance companies that pay license fees or taxes under this section shall not credit against the county license fee or tax that portion of a city license fee or tax that becomes effective for the first time on or after July 1, 2000, or is increased effective on or after July 1, 2000. The provisions of this paragraph shall expire on June 30, 2002, unless extended by the General Assembly.

(13) No license fee or tax imposed under this section shall apply to premiums received on health insurance policies issued to individuals nor to policies issued through Kentucky Access created in KRS 304.17B-005.

(14) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.

Approved April 2, 2004

CHAPTER 29

(HB 21)

AN ACT relating to the Kentucky Military Museum.

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

Section 1. KRS 171.345 is amended to read as follows:

(1) There is established the Kentucky Military Museum which shall be housed in the Old State Arsenal, and shall serve as repository of objects relating to the Commonwealth's military history.

(2) The Kentucky Historical Society and its staff shall maintain the museum, receive, store and catalogue all military historical items, and exercise fiduciary responsibility in the preservation and maintenance of the Old State Arsenal and all objects placed ***or loaned for display*** therein.

(3) The Department for Military Affairs and the adjutant general shall provide the Old State Arsenal as the museum facility, shall maintain and operate the building and grounds, and shall cooperate in contributing items of military history for display within the museum.

(4) There is hereby created the Kentucky Military Museum Committee which shall establish policies and procedures for operation of the Military Museum.

(5) (a) The committee shall be composed of the ***following:***

1. ***The*** adjutant general***, as an ex officio voting member;***

2. ***The***~~[and]~~ director of the Historical Society, ***as an ex officio voting member;***~~[both serving ex officio,]~~ and

3. ***Twelve (12)***~~[six (6)]~~ members~~[, each selected from lists of three (3) nominees, with three (3) lists submitted from each ex officio member, all]~~ appointed by the Governor ***under paragraph (b) of this subsection***~~[to serve for terms of four (4) years. The Governor shall also appoint a chairman of the committee from its membership]~~.

(b) 1. Members of the Kentucky Military Museum Committee shall be appointed under this paragraph. By December 15, 2005, the adjutant general and the director of the Historical Society shall each submit six (6) lists of three (3) nominees each. By December 31, 2005, the Governor shall appoint the twelve (12) new members by selecting one (1) member from each list as provided for in subparagraph 2. of this paragraph. Every list shall include at least one (1) nominee with military service, and the ex officio members and the Governor shall give due consideration to fair representation on the committee from all branches of the military.

2. The Governor shall appoint the first member from a list submitted by the adjutant general, the second from a list submitted by the director of the Historical Society, and the third from a list submitted by the adjutant general. In this manner, the Governor shall alternate until the twelve (12) new members are appointed. The terms of the twelve (12) new members shall begin January 1, 2006.

3. The terms of the twelve (12) new members shall be staggered by one (1) year upon each successive appointment, the first member appointed to serve a term of one (1) year with each successive member to serve one (1) more year than the prior appointed member's term. This cycle shall begin again for every fifth member appointed to a vacancy so that no member shall be appointed to a term that exceeds four (4) years in length.

4. a. Except as provided in subdivision b. of this subparagraph, after the initial round of twelve (12) appointments, the terms for all members shall be four (4) years, and the method of appointment shall continue the practice of the Governor alternating between lists of three (3) nominees submitted by the adjutant general and the director of the Historical Society. A list of nominees shall be submitted by December 15, and the Governor shall make the appointment by December 31. The member's term shall begin January 1.

b. If any person fails to complete his or her term, whether an initial term beginning January 1, 2006, or later, his or her successor shall be appointed to complete the unexpired term. The Governor shall appoint the successor from a list of three (3) nominees submitted by the same official, the adjutant general or the director of the Historical Society, who submitted the list of three (3) nominees from which the predecessor was appointed. The list shall be submitted to the Governor within fifteen (15) days after the vacancy occurs, and the Governor shall make his or her appointment from the list within fifteen (15) days after the submission.

5. No committee member shall serve more than two (2) consecutive terms. A person appointed to finish an unexpired term exceeding two (2) years shall be deemed to have served a full term. A former member may be reappointed following an absence of one (1) term.

(c) A committee member shall be removed for cause only when nine (9) members of the committee vote for removal. Failure to attend at least half of the committee meetings in a calendar year shall be sufficient cause.

(d) 1. In February of every even-numbered year, the committee shall elect a chair, vice chair, and secretary, each to serve two (2) year terms. In the absence of the chair or in the event of a vacancy in that position, the vice chair shall serve as chair.

2. If a chair, vice chair, or secretary fails to complete his or her two (2) year term, the committee, within thirty (30) days of the vacancy, shall appoint a successor to complete the term.

3. A quorum shall consist of eight (8) or more of the fourteen (14) members. Except as provided in paragraph (c) of this subsection, an affirmative vote of a majority of a quorum shall be necessary for committee action.

(6) ~~[(5)]~~ The Military Museum and committee shall be attached to the Kentucky Historical Society for administrative and other purposes.

Section 2. This Act takes effect December 1, 2005.

Approved April 2, 2004

CHAPTER 30

(HB 92)

AN ACT relating to special military license plates.

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

Section 1. KRS 186.041 is amended to read as follows:

(1) The provisions of this section shall govern the issuance of all special military-related license plates. Except as provided in subsection (9) of this section, a person who wants to purchase a special military-related license plate shall apply to the county clerk in the county where the person lives on a form prescribed by the Transportation Cabinet. Each initial and renewal application shall be accompanied by proof that the person is associated with the United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, United States Coast Guard Auxiliary, Kentucky National Guard, Merchant Marines with service between December 7, 1941, and August 15, 1945, or Civil Air Patrol in one (1) of the following ways:

(a) An active component member;

(b) A retired member; or

(c) A veteran who received a discharge under honorable conditions, or the veteran's widow and:

1. Performed twenty-four (24) months of active-duty service;

2. Received an early release due to injuries or other medical condition, or at the convenience of the service;

3. Received a hardship discharge;

4. Was separated or retired due to a disability; or

5. Was determined to have a service-connected disability incurred during the enlistment.

(2) Initial registration and renewal registration fees for special military-related license plates shall be charged as provided in this subsection and KRS 186.174:

(a) Disabled veterans and recipients of the Congressional Medal of Honor licensed under subsection (5) of this section shall not be charged an initial registration fee and shall not be charged a renewal registration fee. The license plate and certificate of registration shall be issued free of charge.

(b) The initial registration fee shall be a seventeen dollar ($17) state fee that shall be divided under the provisions of subsection (3) of this section and that includes the cost to reflectorize the plate under KRS 186.240(2)(c) and a three dollar ($3) county clerk fee, and the renewal registration fee shall be a three dollar ($3) county clerk fee for:

1. Former prisoners of war licensed under subsection (11) of this section;

2. Survivors of Pearl Harbor licensed under subsection (12) of this section; and

3. Members of the National Guard licensed under subsection (13) of this section.

(c) The initial registration fee shall be a seventeen dollar ($17) state fee that shall be divided under the provisions of subsection (3) of this section, and the renewal registration fee shall be a twelve dollar ($12) state fee that includes the cost to reflectorize the plate under KRS 186.240(2)(c) and a three dollar ($3) county clerk fee for:

1. Disabled veterans licensed under subsection (6) of this section;

2. Purple Heart recipients licensed under subsection (10) of this section, except that if a Purple Heart recipient also qualifies as a disabled veteran under subsection (5) of this section, the Purple Heart recipient may receive either a Purple Heart or a disabled veteran's license plate, both initial and renewal, and the certificate of registration free of charge;

3. Members of the Civil Air Patrol licensed under subsection (14) of this section; and

4. Other active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Merchant Marines licensed under subsection (15) of this section.

(d) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross licensed under subsection (9) of this section shall be charged an initial registration fee and a renewal registration fee of three dollars ($3.00) that shall be retained by the county clerk. A recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross licensed under subsection (9) of this section shall not be charged a state fee when initially receiving the plate or upon annual renewal of the plate.

(e) The initial and renewal registration fee for a military license plate that has been combined with a personalized license plate under the provisions of this section shall be as provided under KRS 186.174.

(3) The initial state fee collected under subsections (2)(b) and (2)(c) of this section shall be divided between the Transportation Cabinet and the Department of Veterans' Affairs. The Transportation Cabinet shall receive twelve dollars ($12) of the initial state fee and the Department of Veterans' Affairs shall receive five dollars ($5) of the initial state fee. The county clerk shall forward money collected under subsections (2)(b) and (2)(c) of this section to the Transportation Cabinet who shall forward the money to the Department of Veterans' Affairs on a quarterly basis and the department shall deposit the money into the veterans' program trust fund established by KRS 40.460(2)(b). A person renewing a special military license plate issued under this section may donate five dollars ($5) to support the veteran's program trust fund. Money donated under this subsection

shall be paid to the county clerk who shall forward the money to the Transportation Cabinet who shall forward the money on a quarterly basis to the Department of Veterans' Affairs and the department shall deposit the money into the veteran's program trust fund established by KRS 40.460(2)(b).

(4) ***(a)*** A special military-related license plate may be issued for use on***:***

1. A passenger car registered under KRS 186.050(1)***;***

2. ***A motorcycle or sidecar attachment registered under subsection (2) of Section 2 of this Act;*** or~~[for]~~

3. A commercial vehicle registered under KRS 186.050(3)(a) that has a gross laden weight of six thousand (6,000) pounds or less.

(b) Except as provided in subsection (7) of this section and KRS 186.174, a license plate issued under this section shall have the renewal registration decal issued annually during the applicant's birth month and shall be a five (5) year license plate. The member, retired member, veteran, or reservist may purchase two (2) special military-related license plates annually for vehicles they own or lease. A license plate issued under this section may be combined with a personalized license plate under the provisions of KRS 186.174.

(5) A recipient of the Congressional Medal of Honor, a recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross, or a disabled veteran who has been or shall be given financial assistance toward the purchase or lease of a motor vehicle by the United States Department of Veterans Affairs under the provisions of 38 U.S.C. sec. 1901, or any other public law that may be passed by the Congress of the United States shall initially and annually be issued a certificate of registration and a special military-related license plate free of charge.

(6) A veteran who has been declared to be at least seventy percent (70%) service-connected disabled by the United States Department of Veterans Affairs, or who is receiving total service-connected disability rating for compensation on individual unemployability, and who has not received financial assistance from the United States Department of Veterans Affairs toward the purchase or lease of a motor vehicle shall be eligible for a disabled veterans license plate upon payment of the initial registration fee required in subsection (2)(c) of this section.

(7) A disabled veterans license plate shall be printed in red, white, and blue colors. Half of the license plate shall be in one (1) color, the other half a second color, and the figures and lettering in the third color. Each plate shall contain the international symbol of access adopted by Rehabilitation International in 1969, the name of the state, the year, the registration number, and the words "Disabled Vet." A disabled veterans license plate shall have the renewal registration decal issued annually on July 31.

(8) A recipient of the Congressional Medal of Honor shall be eligible for a Congressional Medal of Honor license plate that shall be printed in blue and white colors and shall follow the color scheme for all figures and letters as prescribed for passenger cars. Each plate shall contain the name or an abbreviation of the state and the words "Medal of Honor" and a number uniquely identifying each recipient, in lieu of registration numbers.

(9) A recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross shall be eligible for a Service Cross license plate upon submission of an application to the Kentucky Department of Veterans' Affairs. The recipient shall be required to include with the initial application for a Service Cross license plate a copy of the general order that authorized the award and the recipient's Department of Defense form number 214. The Department of Veterans' Affairs shall verify the documentation submitted with the application for a Service Cross license plate, and if the individual applying for the plate is confirmed to be a recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross, the Department of Veterans' Affairs shall submit the applicant's name to the Transportation Cabinet's Division of Motor Vehicle Licensing not later than September 1 preceding the year that the Service Cross license plate is to be initially issued or renewed. When the Service Cross license plate is ready, the plate shall be sent to the county clerk in the county of the applicant's residence. The Transportation Cabinet's Division of Motor Vehicle Licensing shall inform each applicant in writing that the Service Cross license plate is ready and may be picked up at the county clerk's office. Each Service Cross license plate shall contain the name or an abbreviation for the state and an alphabetic or numeric designation uniquely identifying each recipient of a Service Cross license plate in lieu of registration numbers. The Transportation Cabinet shall have the authority to select three (3) designs and the appropriate color scheme for each design of the Service Cross license plate. In addition to the requirements of

this subsection, the Transportation Cabinet shall have the authority to include other information on the Service Cross license plate. The Transportation Cabinet shall prescribe the type of application form required by this subsection and shall supply the Department of Veterans' Affairs with the application form required by this subsection.

(10) A recipient of a Purple Heart medal shall be eligible for a Purple Heart license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. A Purple Heart license plate shall bear the name "Purple Heart," a registration number, and an appropriate logo to be determined by the Transportation Cabinet.

(11) A person who is a former prisoner of the enemy during World War I, World War II, the Korean War, or the Vietnam War, or the spouse of a deceased former prisoner of war, shall be eligible for a former prisoner of war license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. The application shall be accompanied by written proof from the United States Department of Veterans Affairs or other appropriate federal agency stating the period of time the person or person's spouse was a prisoner of war. A former prisoner of war license plate shall be printed in red, white, and blue colors. Each plate shall contain the name of the state, the year, the registration number, and the words "Former P.O.W." If a former prisoner of war dies with a vehicle licensed as authorized under this section, the person's surviving spouse may retain the license plate for use on the same vehicle or on another vehicle that complies with the provisions of subsection (4) of this section.

(12) A person who is certified by the Kentucky chapter of the Pearl Harbor Survivors Association as being a survivor of the attack on Pearl Harbor shall be eligible for a Pearl Harbor license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. The Transportation Cabinet shall issue an applicant an appropriately designed plate identifying the vehicle as registered to a Pearl Harbor survivor. The person shall be required to attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;

(c) Was discharged honorably from the United States Armed Forces; and

(d) Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.

(13) A person who is a member of the Kentucky National Guard, or a retired member, shall be eligible for a National Guard license plate upon payment of the initial registration fee required in subsection (2)(b) of this section. A National Guard license plate shall bear the name "Kentucky National Guard," a registration number, and the logo of the National Guard. Upon termination of membership in the Kentucky National Guard, except for those who remain eligible through retirement, a person shall comply with the provisions of subsection (16) of this section.

(14) A person who is a member of the Civil Air Patrol shall be eligible for a Civil Air Patrol license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. A Civil Air Patrol license plate shall bear the name "Civil Air Patrol," a registration number, and an appropriate logo to be determined by the Transportation Cabinet. Upon termination of membership in the Civil Air Patrol, a person shall comply with the provisions of subsection (16) of this section.

(15) (a) A person who meets the requirements of subsection (1) of this section shall be eligible for a military license plate upon payment of the initial registration fee required in subsection (2)(c) of this section. The plate shall bear:

1. A seal indicating Army, Navy, Air Force, Marine Corps, or Coast Guard, or, in the case of the Merchant Marines, a seal indicating the branch of service issuing a discharge;

2. A decal indicating whether the person's status is active duty, reserve duty, veteran, retired veteran, or widow; and, if applicable, a decal for auxiliary in the case of the Coast Guard or a decal for the Merchant Marines;

3. A veteran's decal may further indicate a veteran's service in a wartime era; and

4. A registration number.

(b) Upon termination of membership in the active component or reserves of the United States Armed Forces or the United States Coast Guard, a person shall comply with the provisions of subsection (16) of this section.

(c) The Transportation Cabinet, in coordination with the Department of Veterans' Affairs, shall promulgate an administrative regulation under KRS Chapter 13A defining criteria for the issuance of specific decals for veterans' wartime service.

(16) Except for persons changing their status to retired, within thirty (30) days of termination of membership or reserve status in a group eligible for a special military-related license plate, a person issued a military plate under this section or a combined personalized/special military license plate issued under KRS 186.174, shall return the plate to the county clerk of the county of his residence. Upon payment of a three dollar ($3) county clerk fee, the county clerk shall issue the person a regular license plate to replace the plate being surrendered.

(17) Upon the sale, transfer, or termination of a lease of a motor vehicle for which a special military-related license plate has been issued, the owner shall return the military plate and the certificate of registration to the county clerk. The county clerk shall issue a regular license plate and certificate of registration upon payment of a twelve dollar ($12) state fee which includes the fifty cent ($0.50) fee to reflectorize the plate under KRS 186.240(2)(c) and a three dollar ($3) county clerk fee. The twelve dollar ($12) state fee shall be forwarded to the Transportation Cabinet. Upon request and payment of a three dollar ($3) fee, the county clerk shall reissue the special military-related license plate for use on any other vehicle owned by the same person who purchased the special plate for the current licensing period.

(18) The cabinet shall promulgate administrative regulations to set forth the documentation required in order to establish a person's qualifications to receive any license plate issued under this section.

(19) A person seeking a special military-related license plate for a vehicle provided to that person pursuant to an occupation shall conform to the requirements of KRS 186.050(14).

(20) If a special military-related license plate is lost, stolen, mutilated, or deteriorates to the point where the inscriptions or decals are not discernible, the person to whom the plate was issued may obtain a replacement plate free of charge.

Section 2. KRS 186.050 is amended to read as follows:

(1) The annual registration fee for motor vehicles, including taxicabs, airport limousines, and U-Drive-Its, primarily designed for carrying passengers and having provisions for not more than nine (9) passengers, including the operator, and pickup trucks and passenger vans which are not being used on a for-hire basis shall be eleven dollars fifty cents ($11.50).

(2) ***Except as provided in Section 1 of this Act,*** the annual registration fee for each motorcycle shall be nine dollars ($9), and for each sidecar attachment, seven dollars ($7).

(3) (a) All motor vehicles having a declared gross weight of vehicle and any towed unit of six thousand (6,000) pounds or less, except those mentioned in subsections (1) and (2) of this section and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (4) to (14) of this section, shall be eleven dollars and fifty cents ($11.50).

(b) All motor vehicles except those mentioned in subsections (1) and (2) of this section, and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (3)(a) and (4) to (14) of this section, shall be as follows:

Declared Gross Weight of Vehicle and Any Towed Unit	Registration Fee
6,001-10,000	$24.00
10,001-14,000	30.00
14,001-18,000	50.00
18,001-22,000	132.00

22,001-26,000	160.00
26,001-32,000	216.00
32,001-38,000	300.00
38,001-44,000	474.00
44,001-55,000	669.00
55,001-62,000	1,007.00
62,001-73,280	1,250.00
73,281-80,000	1,410.00

(4) (a) Any farmer owning a truck having a gross weight of thirty-eight thousand (38,000) pounds or less may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents ($11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight of thirty-eight thousand (38,000) pounds or less, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.

(b) Any farmer owning a truck having a declared gross weight in excess of thirty-eight thousand (38,000) pounds shall not be required to pay the fee set out in subsection (3) of this section and, in lieu thereof, shall pay forty percent (40%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the registration receipt shall be considered to be a certification that he is a farmer engaged solely in the production of crops, livestock or dairy products, and that during the current registration year the truck will be used only in transporting persons, food, provender, feed, and machinery used in operating his farm and the products grown on his farm.

(5) Any person owning a truck or bus used solely in transporting school children and school employees may have the truck or bus registered as a school bus and obtain a license for eleven dollars fifty cents ($11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus is used solely in the transportation of school children and persons employed in the schools of the district, that he has caused to be printed on each side of the truck or bus and on the rear door the words "School Bus" in letters at least six (6) inches high, and of a conspicuous color, and the truck or bus will be used during the next twelve (12) months only for the purpose stated.

(6) Any church or religious organization owning a truck or bus used solely in transporting persons to and from a place of worship or for other religious work may have the truck or bus registered as a church bus and obtain a license for eleven dollars and fifty cents ($11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus will be used only for the transporting of persons to and from a place of worship, or for other religious work, and that there has been printed on the truck or bus in large letters the words "Church Bus," with the name of the church or religious organization owning and using the truck or bus, and that during the next twelve (12) months the truck or bus will be used only for the purpose stated.

(7) Any person owning a motor vehicle with a gross weight of fourteen thousand (14,000) pounds or less on which a wrecker crane or other equipment suitable for wrecker service has been permanently mounted may register the vehicle and obtain a license for eleven dollars fifty cents ($11.50) by filing with the county clerk, in addition to other information required, an affidavit that a wrecker crane or other equipment suitable for wrecker service has been permanently mounted on such vehicle and that during the next twelve (12) months the vehicle will be used only in wrecker service. If the gross weight of the vehicle exceeds fourteen thousand (14,000) pounds, the vehicle shall be registered in accordance with subsection (3) of this section. The gross weight of a vehicle used in wrecker service shall not include the weight of the vehicle being towed by the wrecker.

(8) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which when operated in this state are used exclusively for the transportation of property within the limits of the city named in the affidavit hereinafter required to be filed, or within ten (10) miles of the city limits of the city if it is a city

of the first, second, third, or fourth class, or within five (5) miles of its limits if it is a city of the fifth or sixth class, or anywhere within a county containing an urban-county government, shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof shall pay seventy-five percent (75%) of the fee set forth in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. Nothing in this section shall be construed to limit any right of nonresidents to exemption from registration under any other provisions of the laws granting reciprocity to nonresidents. Operations outside of this state shall not be considered in determining whether or not the foregoing mileage limitations have been observed. When claiming the right to the reduced fee, the applicant's signature on the certificate of registration and ownership shall constitute a certification or affidavit stating that the motor vehicle when used within this state is used only for the transportation of property within the city to be named in the affidavit and the area above set out and that the vehicle will not be used outside of a city and the area above set out during the current registration period.

(9) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility, where such mill or processing facility is located at a point not more than fifty (50) air miles from the harvest area or which are used exclusively for the transportation of concrete blocks or ready-mixed concrete from the point at which such concrete blocks or ready-mixed concrete is produced to a construction site where such concrete blocks or ready-mixed concrete is to be used, where such construction site is located at a point not more than thirty (30) air miles from the point at which such concrete blocks or ready-mixed concrete is produced shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof, shall pay seventy-five percent (75%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the certificate of registration and ownership shall constitute a certification that the motor vehicle will not be used during the current registration period in any manner other than that for which the reduced fee is provided in this section.

(10) Any owner of a commercial vehicle registered for a declared gross weight in excess of eighteen thousand (18,000) pounds, intending to transfer same and desiring to take advantage of the refund provisions of KRS 186.056(2), may reregister such vehicle and obtain a "For Sale" certificate of registration and ownership for one dollar ($1). Title to a vehicle so registered may be transferred, but such registration shall not authorize the operation or use of the vehicle on any public highway. No refund may be made under the provisions of KRS 186.056(2) until such time as the title to such vehicle has been transferred to the purchaser thereof. Provided, however, that nothing herein shall be so construed as to prevent the seller of a commercial vehicle from transferring the registration of such vehicle to any purchaser thereof.

(11) The annual registration fee for self-propelled vehicles containing sleeping or eating facilities shall be twenty dollars ($20) and the multiyear license plate issued shall be designated "Recreational vehicle." The foregoing shall not include any motor vehicle primarily designed for commercial or farm use having temporarily attached thereto any sleeping or eating facilities, or any commercial vehicle having sleeping facilities.

(12) The registration fee on any vehicle registered under this section shall be increased fifty percent (50%) when the vehicle is not equipped wholly with pneumatic tires.

(13) (a) The Department of Vehicle Regulation is authorized to negotiate and execute an agreement or agreements for the purpose of developing and instituting proportional registration of motor vehicles engaged in interstate commerce, or in a combination of interstate and intrastate commerce, and operating into, through or within the Commonwealth of Kentucky. The agreement or agreements may be made on a basis commensurate with, and determined by, the miles traveled on, and use made of, the highways of this Commonwealth as compared with the miles traveled on and use made of highways of other states, or upon any other equitable basis of proportional registration. Notwithstanding the provisions of KRS 186.020, the cabinet shall promulgate administrative regulations concerning the registration of motor vehicles under any agreement or agreements made under this section and shall provide for direct issuance by it of evidence of payment of any registration fee required under such agreement or agreements. Any proportional registration fee required to be collected under any proportional registration agreement or agreements shall be in accordance with the taxes established in this section.

(b) Any owner of a commercial vehicle who is required to title his motor vehicle under this section shall first title such vehicle with the county clerk pursuant to KRS 186.020 for a state fee of one dollar ($1). Title to such vehicle may be transferred; however title without proper registration shall not authorize the

operation or use of the vehicle on any public highway. Any commercial vehicle properly titled in Kentucky may also be registered in Kentucky, and, upon payment of the required fees, the department may issue an apportioned registration plate to such commercial vehicle.

(c) Any commercial vehicle that is properly titled in a foreign jurisdiction, which vehicle is subject to apportioned registration, as provided in paragraph (a) of this subsection, may be registered in Kentucky, and, upon proof of proper title, and payment of the required fees, the department may issue an apportioned registration plate to the commercial vehicle. The department shall promulgate administrative regulations in accordance with this section.

(14) Any person seeking to obtain a special license plate for an automobile that has been provided to him pursuant to an occupation shall meet both of the following requirements:

(a) The automobile shall be provided for the full-time exclusive use of the applicant; and

(b) The applicant shall obtain permission in writing from the vehicle owner or lessee on a form provided by the cabinet to use the vehicle and for the vehicle to bear the special license plate.

Approved April 2, 2004

CHAPTER 31

(HB 283)

AN ACT relating to eggs.

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

Section 1. KRS 260.630 is amended to read as follows:

(1) All wholesale egg packs consisting of cases or portions of cases shall bear a legible label designating contents; quality; quantity; date of packing ***and*** ~~[or an]~~ expiration date~~[of no more than thirty (30) days from the date of packing]~~; dealer's name, address, and plant number; and size and grade of eggs. ***Expiration dating shall include qualifying prefixes such as "EXP," "Expiration date," "Sell by," "Not to be sold after date on end of carton," "Purchase by," "Last sale date on end of carton," or other similar language denoting stock rotation. The dates associated with these prefixes shall be calculated from the date the eggs are originally packed into the container and may not exceed thirty (30) days including the day of pack. Qualifying prefixes such as "Use before," "Use by," "Best before," "Best by," or other similar language generally indicate the maximum time frame for expected quality. The dates associated with these prefixes shall be calculated from the date the eggs are packed into the container and may not exceed forty-five (45) days including the day of pack.*** The letters on the label shall not be less than one-fourth (1/4) inch in height.

(2) Graded eggs shall be offered for sale in cartons or other consumer packs and shall be plainly and legibly marked as to grade; quality; size; quantity; dealer's name, address, and plant number; and date of packing ***and*** ~~[or an]~~ expiration date~~[of no more than thirty (30) days from the date of packing]~~. ***Expiration dating shall include qualifying prefixes such as "EXP," "Expiration date," "Sell by," "Not to be sold after date on end of carton," "Purchase by," "Last sale date on end of carton," or other similar language denoting stock rotation. The dates associated with these prefixes shall be calculated from the date the eggs are originally packed into the container and may not exceed thirty (30) days including the day of pack. Qualifying prefixes such as "Use before," "Use by," "Best before," "Best by," or other similar language generally indicate the maximum time frame for expected quality. The dates associated with these prefixes shall be calculated from the date the eggs are packed into the container and may not exceed forty-five (45) days including the day of pack.*** The marking letters shall not be less than one-fourth (1/4) inch in height.

(3) Eggs offered for sale that are not in a carton shall be in a container that:

(a) Contains all information required by this section; and

(b) Displays the information in legible letters at least one-fourth (1/4) inch high on a sign attached to the container.

(4) If eggs are packed in retail "breakaway" cartons that can be divided by the consumer or retailer into smaller units for the purpose of selling lesser amounts of eggs, each half or portion of the container shall contain full information as required by subsection (2) of this section.

(5) Egg cartons cannot be reused.

(6) If a producer who sells directly to consumers only is using stock cartons, the cartons shall be labeled "ungraded" followed by "produced by:" (producer's name and address) and "sold directly to the consumer." This information may be handprinted on the carton if it is legible and appears on the top panel of the egg carton.

Approved April 2, 2004

CHAPTER 32

(HB 286)

AN ACT relating to bovine animal assessments.

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

Section 1. KRS 247.650 is amended to read as follows:

(1) With respect to any referendum conducted under the provisions of KRS 247.610 to 247.685, the Commissioner of Agriculture shall, before calling and announcing the referendum, fix, determine**,** and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours**,** and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which ***the***~~[such]~~ assessment shall be collected if authorized by ***the***~~[said]~~ producers, and the general purposes to which ***the***~~[said]~~ amount~~[so]~~ collected shall be applied. No assessment levied under the provisions of any referendum shall exceed ***one dollar ($1.00)***~~[twenty-five cents ($0.25)]~~ on each bovine animal marketed in the state by any producer included in the group to which ***the***~~[such]~~ referendum was submitted or by any person subsequently becoming a new producer in the area in which ***the***~~[such]~~ referendum was held.

(2) The first referendum held under the provisions of KRS 247.610 to 247.685 shall specify that the assessment, if approved, levied under that referendum shall be ten cents ($0.10) on each bovine animal.

(3) No assessment shall be made on any bovine animal marketed in the state which sells for ten dollars ($10) or less.

Section 2. KRS 247.652 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 247.610 to 247.685, in accordance with the Federal Beef Promotion and Research Act of 1985, each Kentucky producer of a bovine animal shall receive a credit of up to fifty cents ($0.50) on each bovine animal on which a one dollar ($1) assessment was made under the terms of the federal act. Each~~[such]~~ fifty cent ($0.50) credit received by the producer shall be retained by the association certified under KRS 247.610 to 247.685 and shall be used by the association for the purposes provided in KRS 247.610 to 247.685.

(2) As long as the Kentucky producer of bovine animals receives the fifty cents ($0.50) per head credit in accordance with subsection (1) of this section, the assessment provided for in KRS 247.650 shall not be effective.

(3) In the event the one dollar ($1) assessment provided by the federal act is terminated or suspended, the assessment on each Kentucky producer of a bovine animal shall continue and shall not exceed ***one dollar***~~[twenty-five cents ($0.25)]~~ for the purposes of KRS 247.610 to 247.685.

Section 3. KRS 247.610 is amended to read as follows:

It is declared to be in the interest of the public welfare that Kentucky farmers who are producers of bovine animals shall be permitted and encouraged to act jointly and in cooperation with all producers, handlers, dealers, and processors of bovine animals in promoting and stimulating, by research, market development, and education, the~~[increased production,]~~ use and sale, domestic and foreign, of~~[bovine animals and]~~ bovine animal products.

Section 4. KRS 247.625 is amended to read as follows:

It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that producers of bovine animals shall be permitted by referendum to be held among ***the***~~[such]~~ respective groups

and subject to the provisions of KRS 247.610 to 247.685 to levy upon themselves an assessment on bovine animals and provide for the collection of the ***assessment*** ~~[same]~~ for the purpose of financing or contributing towards the financing of a program of research, market development**,** and education to increase the domestic and foreign consumption, use, sale, and markets for~~[bovine animals and]~~ bovine animal products.

Approved April 2, 2004

CHAPTER 33

(HB 290)

AN ACT relating to retirement.

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

Section 1. KRS 16.582 is amended to read as follows:

(1) (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.

(b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.

(c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.

(d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.

(2) Any person may qualify to retire on disability, subject to the following:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;

(b) The person shall not be eligible for an unreduced retirement allowance;

(c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and

(e) A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.

(3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(b) The incapacity is deemed to be permanent; and

(c) The incapacity does not result directly or indirectly from:

1. Injury intentionally self-inflicted while sane or insane;

2. Injury or disease resulting from military service; or

3. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:

a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

(4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.

2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.

(b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

(c) The person's physical exertion requirements shall be determined based on the following standards:

1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.

4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more

pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

(5) The disability retirement allowance shall be determined as provided in KRS 16.576, subject to the following:

(a) If the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years;

(b) If the member's total service credit on his last day of paid employment is twenty (20) or more years, then his total service credit shall be used.

(c) For a member whose participation begins on or after August 1, 2004, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability.

(6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:

(a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and

(b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.

(7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.

(8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.

(9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

Section 2. KRS 61.5525 is amended to read as follows:

(1) Effective July 1, 2001, purchase of service under the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852, except as provided in subsection (2) of this section, shall be determined by multiplying the higher of the employee's current rate of pay, final rate of pay, or final compensation as of the end of the month in which the purchase is made times the actuarial factor times the number of years of service being purchased.

(2) This provision shall not apply to KRS 61.552(1) and (23), or KRS 61.592(3)(c).

(3) Service purchased on or after August 1, 2004, under the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852, except for service purchased under subsections (1) and (23) of KRS 61.552, shall not be used to determine eligibility for or the amount of the monthly insurance contribution under Section 5 of this Act.

(4) For a member whose participation begins on or after August 1, 2004, service purchased under the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852, except for service purchased under subsections (1) and (23) of KRS 61.552, shall not be used to determine eligibility for a

retirement allowance under disability retirement, early retirement, normal retirement, or death under any of the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. Purchased service shall only be used to determine the amount of the retirement allowance of a member who is eligible for a retirement allowance under disability, early retirement, normal retirement, or death under any of the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852, based on service earned as a participating employee.

Section 3. KRS 61.595 is amended to read as follows:

(1) Effective July 1, 1990, upon retirement at normal retirement date or subsequent thereto, a member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) for the County Employees Retirement System and one and ninety-seven hundredths percent (1.97%) for the Kentucky Employees Retirement System of final compensation multiplied by the number of years of service credit, except that:

(a) Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one of the state-administered retirement systems and who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account;

(b) ***For a member of the County Employees Retirement System whose participation begins on or after August 1, 2004, the annual retirement allowance upon retirement at normal retirement date or later shall be equal to two percent (2%) of final compensation multiplied by the number of years of service credit and shall be payable monthly during his lifetime.***

(c) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars ($240) multiplied by the number of years of service as a member of the General Assembly;

(d)~~[(c)]~~ The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;

(e)~~[(d)]~~ Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 Regular Session are eligible for an increased retirement allowance of two hundred forty dollars ($240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication;

(f)~~[(e)]~~ The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars ($512); and

(g)~~[(f)]~~ The annual retirement allowance for a member of the Kentucky employees retirement system or County Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.

(2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.

(b) A member of the Kentucky Employees Retirement System or the County Employees Retirement System who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in KRS 61.559(2)(c) and (d) to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by KRS 61.559(2)(c) and (d) or to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).

(3) The retirement allowance shall be calculated by using the member's known creditable compensation prior to his last month's employment and an estimate of his creditable compensation during the last month he was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.

(4) A new calculation shall be made when the official report has been received of the member's creditable compensation during his last month's employment. However, the retirement allowance determined in accordance with subsection (3) of this section shall be the official retirement allowance unless the new calculation derives an amount which is two dollars ($2) greater or less than the amount of the initial retirement payment. If the member or beneficiary chose an actuarial equivalent refund payment option, the amount of estimated retirement allowance shall be the official retirement allowance unless the new calculation produces an amount which is one hundred dollars ($100) greater or less than the amount of the initial retirement payment.

Section 4. KRS 61.605 is amended to read as follows:

(1) Upon disability retirement, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the employee's total service beginning with his last date of paid employment and continuing to his sixty-fifth birthday; however, the maximum service credit added shall not exceed the total service the employee had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, an employee has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to twenty-seven (27) years.

(2) For a member whose participation begins on or after August 1, 2004, the disability retirement allowance shall be the higher of twenty percent (20%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability.

Section 5. KRS 61.702 is amended to read as follows:

(1) (a) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, except as provided in subsection (8) of this section. The board shall also arrange to provide health care coverage by health maintenance

organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section.

(b) The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status, except as provided in subsection (8) of this section. Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.

(c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.

(2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.

(3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:

1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;

2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;

3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;

4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.

5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall

be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who becomes disabled in the line of duty as defined in KRS 16.505(19) or KRS 61.621, shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who is killed in the line of duty as defined in KRS 16.505(19) or KRS 61.621, shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service."

(b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.

1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance fund, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.

2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.

3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

(4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the spouse, dependent, disabled child, or beneficiary hospital and medical insurance is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and dependents of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System, or the beneficiary of the member, if the member designated only one (1) person as beneficiary. The percentage of the monthly contribution paid for the spouse and dependents of a recipient who was in a hazardous position shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.

(c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for

the spouse or dependents or beneficiary of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or dependent or beneficiary after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent or beneficiary is not eligible for Medicare coverage.

(5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

(7) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.

(8) ***For a member whose participation begins on or after July 1, 2003, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems.***

(a) An employee who earns at least one hundred twenty (120) months of service in the state-administered retirement systems shall be eligible for benefits as follows:

1. For employees who are not in a hazardous position, a monthly insurance contribution of ten dollars ($10) for each year of service as a participating employee.

2. For employees who are in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars ($15) for each year of service as a participating employee in a hazardous position or as a participating member of the State Police Retirement System. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars ($10) for each year of service the member attained as a participating employee in a hazardous position or as a participating member of the State Police Retirement System.

(b) The one hundred twenty (120) months of service requirement shall be waived for a member who is disabled or killed in the line of duty as defined in KRS 16.505(19) or KRS 61.621, and the member or his beneficiary shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a hazardous position.

(c) The monthly insurance contribution amount shall be increased July 1 of each year by the percentage change in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the federal Bureau of Labor Statistics, not to exceed five percent (5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.

(d) The benefits of this subsection provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the

benefits conferred in this subsection if in its judgment the welfare of the Commonwealth so demands~~[For employees hired on or after July 1, 2003, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems. An employee who earns at least one hundred twenty (120) months of service in the state-administered retirement systems shall be eligible for benefits determined using the formula in subsection (3) of this section for a recipient with one hundred twenty (120) or more months of service. The one hundred twenty (120) months of service requirement shall be waived for a member who is disabled or killed in the line of duty as defined in KRS 16.505(19) or KRS 61.621, and the member or his beneficiary shall be entitled to the benefits payable under subparagraph (3)(a)5. of this section. The benefits of this subsection as provided on July 1, 2003, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands]~~.

Approved April 2, 2004

CHAPTER 34

(HB 420)

AN ACT relating to public accountancy.

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

Section 1. KRS 325.280 is amended to read as follows:

(1) The board may issue a license to practice by reciprocity, if the applicant submits an application for a license to practice ***any regulated activity***~~[public accountancy]~~, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board, and meets the following requirements:

(a) The applicant received a grade on the Uniform Certified Public Accountants Examination in another state that was equivalent to a passing grade at the time in this Commonwealth;

(b) The applicant holds a valid active license, and is in good standing as a certified public accountant, issued under the laws of any other state; and

(c) 1. The applicant meets all current experience requirements in this Commonwealth at the time application is made; or

2. Within the ten (10) years immediately preceding the application, had four (4) years of experience in the practice of ***the regulated activities***~~[public accountancy]~~ acceptable to the board upon which the license was based.

(2) The board may issue a license to practice ***the regulated activities***~~[public accountancy]~~ without examination to an applicant who holds a valid license to engage in the practice of ***the regulated activities***~~[public accountancy]~~ in good standing from a foreign country if:

(a) The applicant's foreign country makes similar provisions to allow a person who holds a valid license to practice ***the regulated activities***~~[public accountancy]~~ issued by this Commonwealth to obtain that foreign country's comparable designation;

(b) The authority of the foreign country that issued the designation regulates the practice of ***the regulated activities***~~[public accountancy]~~, including the issuance of reports upon financial statements;

(c) The foreign designation was granted upon education and examination requirements which were established by the foreign authority or law and were substantially equivalent to those in effect in this Commonwealth at the time the foreign designation was granted;

(d) The applicant satisfies the applicable experience requirement contained in paragraph (c) of subsection (1) of this section;

(e) The applicant has successfully passed a uniform qualifying examination on United States national standards ***approved by the board***~~[and an examination on the law and administrative regulations of the board]~~; and

(f) The applicant submits an application for a license to practice ***the regulated activities***~~[public accountancy]~~, upon forms approved by the board, that includes all required fees, in the amounts as determined by administrative regulation promulgated by the board.

(3) (a) The board may ***grant a privilege***~~[issue a license]~~ to practice ***the regulated activities*** to ***a natural person***~~[an applicant]~~ whose principal place of business is not in this state and who holds ***an active and***~~[a]~~ valid license ***in good standing*** to practice as a certified public accountant in ***the***~~[another]~~ state ***where his or her principal place of business is located and is*** deemed by the board to have substantially equivalent licensing standards. The board shall determine the procedure for reviewing and determining the substantial equivalency of any state.

(b) ***A person applying for the privilege established in paragraph (a) of this section,***~~[The applicant]~~ shall ***satisfy***~~[apply in accordance with administrative regulations promulgated by the board and meet]~~ the following requirements:

1. Submit ***to the board, notification to practice on a form adopted by the board***~~[an application]~~ and pay a fee not to exceed ***one***~~[two]~~ hundred dollars ***($100). The form shall be submitted prior to the applicant engaging in a regulated activity in this state or no later than thirty (30) calendar days thereafter***~~[($200)]~~;

2. Agree to submit to the personal and subject matter jurisdiction and disciplinary authority of the board;

3. Comply with the laws of this chapter and the board's administrative regulations;

4. Agree to the appointment of the ***state*** board that issued the license as the agent upon whom process may be served in any action or proceeding by the board against the applicant;

5. Agree to immediately cease offering services if any of the information filed is false;

6. Agree to ***notify the board immediately if***~~[renew]~~ the license~~[by affirming continuing licensure]~~ in the ***applicant's*** home jurisdiction ***becomes inactive, lapses, or is subjected to any disciplinary action***;~~[and]~~

7. ***Agree that, notwithstanding the notice and hearing requirements of KRS 325.340, the privilege shall be automatically suspended or revoked if the home jurisdiction takes identical action on the license upon which the privilege is granted; and***

8. ***Agree***~~[Recognize]~~ that if the applicant moves his or her principal place of business to Kentucky***,*** he or she shall notify the board ***prior to the move*** and ***immediately apply for a license under subsection (1) or (2) of this section***~~[revise the license application to reflect this information]~~.

(c) A privilege issued under this subsection shall automatically expire when one (1) of the following occurs:

1. The privilege is not renewed prior to July 1 of the second year following the date the privilege was last issued; or

2. The license upon which the privilege was granted expires.

The privilege may be renewed if the applicant meets the requirements of this subsection and administrative regulations promulgated pursuant to this subsection.

(d) The board may take disciplinary action against a licensee for an act committed in another state if the act at the time of its commission is a violation of this chapter and administrative regulations promulgated pursuant to this chapter.

Section 2. KRS 325.431 is amended to read as follows:

(1) The proceedings, records, and workpapers of the review committee shall be privileged and not subject to discovery, subpoena, or other means of legal process, or introduction into evidence in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding. No member of the review committee or person involved in the quality review process shall testify in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced, presented,

disclosed, or discussed during or in connection with the quality review process, or as to any finding, recommendation, evaluation, opinion, or other action of the committee.

(2) Information, documents, or records that are publicly available shall not be immune from discovery or use in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding merely because they were presented or considered in connection with the quality review process.

(3) ***The privilege created in subsection (1) of*** this section shall not apply to***:***

(a) Materials prepared in connection with a particular engagement merely because they happen to subsequently be presented or considered as part of the quality of review process.

(b) ~~[This section shall not apply to]~~Disputes between review committees and persons or firms subject to a quality review arising from the performance of the quality review.

(c) Correspondence and reports of the peer review program obtained by the board from a licensee seeking renewal or an individual or firm seeking to become licensed.

(d) A statement obtained by the board from a review committee to determine if a licensee seeking renewal or an individual or firm seeking to become licensed is enrolled in or is not enrolled in a peer review program.

Approved April 2, 2004

CHAPTER 35

(HB 456)

AN ACT relating to medical licensure.

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

Section 1. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

(1) "Board" means the State Board of Medical Licensure;

(2) "President" means the president of the State Board of Medical Licensure;

(3) "Secretary" means the secretary of the State Board of Medical Licensure;

(4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;

(5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;

(6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;

(7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;

(8) "Temporary permit" means a permit issued to a person who has applied for a regular license, and who appears from verifiable information in the application to the executive director to be qualified and eligible therefor;

(9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;

(10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;

(11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the domestic administration of family remedies, the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter, the use of automatic external defibrillators in accordance with the provisions of KRS 311.665 to 311.669, the practice of

podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by paramedics licensed under KRS Chapter 311A, first responders, or emergency medical technicians certified under Chapter 311A, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

(12) "Physician" means a doctor of medicine or a doctor of osteopathy;

(13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;

(14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

(15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;

(16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including but not limited to crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;

(17) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education;

(18) "Order" means a direction of the board or its panels made or entered in writing that determines some point or directs some step in the proceeding and is not included in the final order;

(19) "Agreed order" means a written document that includes but is not limited to stipulations of fact or stipulated conclusions of law that finally resolves a grievance, a complaint, or a show cause order issued informally without expectation of further formal proceedings in accordance with KRS 311.591(6);

(20) "Final order" means an order issued by the hearing panel that imposes one (1) or more disciplinary sanctions authorized by this chapter;

(21) "Letter of agreement" means a written document that informally resolves a grievance, a complaint, or a show cause order and is confidential in accordance with KRS 311.619;

(22) "Letter of concern" means an advisory letter to notify a physician that, although there is insufficient evidence to support disciplinary action, the board believes the physician should modify or eliminate certain practices and that the continuation of those practices may result in action against the physician's license;

(23) "Motion to revoke probation" means a pleading filed by the board alleging that the licensee has violated a term or condition of probation and that fixes a date and time for a revocation hearing;

(24) "Revocation hearing" means a hearing conducted in accordance with KRS Chapter 13B to determine whether the licensee has violated a term or condition of probation;

(25) "Chronic or persistent alcoholic" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of alcoholic beverages;

(26) "Addicted to a controlled substance" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic use of any narcotic drug or controlled substance resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of any narcotic drug or controlled substance;

(27) "Provisional permit" means a temporary permit issued to a licensee engaged in the active practice of medicine within this Commonwealth who has admitted to violating any provision of KRS 311.595 that permits the licensee to continue the practice of medicine until the board issues a final order on the registration or reregistration of the licensee;~~[and]~~

(28) "Fellowship training license" means a license to practice medicine or osteopathy in a fellowship training program as specified by the license***; and***

(29) "Special faculty license" means a license to practice medicine that is limited to instruction as part of an accredited medical school program or osteopathic school program and any affiliated institution for which the medical school or osteopathic school has assumed direct responsibility.

Section 2. KRS 311.571 is amended to read as follows:

(1) No applicant who is a graduate of a medical or osteopathic school located within the United States and its territories and protectorates or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:

(a) Is able to understandably speak, read, and write the English language;

(b) Has graduated from an accredited college or university or has satisfactorily completed a collegiate course of study necessary for entry into an approved medical or osteopathic school or college;

(c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated in the United States or Canada and approved by the board;

(d) Has satisfactorily completed a prescribed course of postgraduate training of a duration to be established by the board in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;

(e) Has successfully completed an examination prescribed by the board;

(f) Has complied with the requirements of KRS 214.615(1); and

(g) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.

(2) No applicant who is a graduate of a medical or osteopathic school located outside the United States or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:

(a) Is able to understandably speak, read, and write the English language;

(b) Has successfully completed a course of study necessary for entry into an approved medical or osteopathic school or college;

(c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated outside the United States or Canada and approved by the board or is a citizen of the United States and has been awarded a diploma by an approved medical or osteopathic school located within the United States or Canada as part of a program designed to allow for the transfer of students to such schools from schools located outside the United States or Canada;

(d) Has successfully completed an examination prescribed by the board;

(e) Has been certified by the educational commission for foreign medical graduates or by an approved United States specialty board;

(f) Has satisfactorily completed a prescribed course of postgraduate training of a duration to be established by the board in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;

(g) Has complied with the requirements of KRS 214.615(1); and

(h) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.

(3) No applicant shall be eligible for a limited license-institutional practice unless the applicant:

(a) Has fulfilled all the requirements for regular licensure as delineated in subsection (1) of this section; or

(b) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a) through (e) and (h) of subsection (2) of this section and in addition has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board;

(c) Has complied with the requirements of KRS 214.615(1); and

(d) Has fulfilled all other reasonable qualifications for limited licensure that the board may prescribe by regulation.

(4) The board may grant an applicant a limited license-institutional practice for a renewable period of one (1) year if the applicant:

(a) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a), (b), (d), (e), and (h) of subsection (2) of this section;

(b) Has fulfilled the requirements for a limited license-institutional practice as indicated in subsection (3)(d) of this section;

(c) Has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board; and

(d) Has complied with the requirements of KRS 214.615(1).

(5) The board may grant an applicant a fellowship training license for a renewable period of one (1) year if the applicant:

(a) Has been accepted for a fellowship approved by the administration of any of Kentucky's medical schools and conducted under the auspices of that medical school; or

(b) Has graduated from a medical school located outside the United States or Canada that has been approved by the board; and

1. Has been certified by the appropriate licensing authority in his or her home country in the subject specialty of the fellowship; and

2. Is able to demonstrate that he or she is a physician of good character and is in good standing in the country where he normally practices medicine.

(6) ***(a) The board may grant an applicant a special faculty license for a renewable period of one (1) year if the applicant:***

1. Holds or has been offered a full-time faculty appointment at an accredited Kentucky medical or osteopathic school approved by the board and is nominated for a special faculty license by the dean of the school of medicine or school of osteopathy;

2. Possesses a current valid license to practice medicine or osteopathy issued by another state, country, or other jurisdiction;

3. Is able to understandably speak, read, and write the English language;

4. Is board certified in his or her specialty;

5. Is not otherwise eligible for a regular license under this chapter; and

6. Is not subject to denial of a license under any provision of this chapter.

(b) The applicant shall submit the fee established by administrative regulation promulgated by the board for an initial license to practice medicine.

(c) An applicant approved for a license under this subsection shall not engage in the practice of medicine or osteopathy outside an academic setting.

(d) The board may grant a regular license to practice medicine or osteopathy to a person who has had a special faculty license for a period of at least five (5) consecutive years.

(7) An applicant seeking regular licensure in the Commonwealth who was originally licensed in another state may obtain licensure in the Commonwealth without further testing and training if the applicant:

(a) Has been endorsed in writing by the applicant's original licensing state as being licensed in good standing in that state; and

(b) Would have satisfied all the requirements for regular licensure described in the preceding subsections had the applicant sought original licensure in this state.

(8)~~[(7)]~~ No applicant shall be granted licensure in the Commonwealth unless the applicant has successfully completed an examination prescribed by the board in accordance with any rules that the board may establish by regulation concerning passing scores, testing opportunities and test score recognition.

(9)~~[(8)]~~ Notwithstanding any of the requirements for licensure established by subsections (1) to ***(8)***~~[(7)]~~ of this section and after providing the applicant or reregistrant with reasonable notice of its intended action and after providing a reasonable opportunity to be heard, the board may deny licensure to an applicant or the reregistrant of an inactive license without a prior evidentiary hearing upon a finding that the applicant or reregistrant has violated any provision of KRS 311.595 or 311.597 or is otherwise unfit to practice. Orders denying licensure may be appealed pursuant to KRS 311.593.

(10)~~[(9)]~~ Notwithstanding any of the foregoing, the board may grant licensure to an applicant in extraordinary circumstances upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the Commonwealth would be beneficial to the public welfare.

(11)~~[(10)]~~ Notwithstanding any provision of this section, the board may exercise its discretion to grant a visiting professor license to an applicant after considering the following:

(a) Whether the applicant meets the qualifications for a regular license;

(b) Whether the applicant is licensed to practice medicine in other states or in other countries; and

(c) The recommendation of the program director of an accredited medical school that confirms the applicant's employment as a visiting professor and that includes, if necessary, written justification for a waiver of the requirements specified in subsections (1) and (2) of this section.

Orders denying applications for a visiting professor license shall not be appealed under KRS 311.593.

Section 3. KRS 311.560 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;

(b) 1. Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; or

2. Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board;

(c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the

board. ***No first-year postgraduate trainee shall violate the provisions of KRS 311.595 or KRS 311.597, and any first-year postgraduate trainee who is released or discharged from a training program for a reason that falls within KRS 311.595 or 311.597 shall be reported by the program director to the board***~~[This shall not be construed to otherwise exempt interns or first-year postgraduate trainees, or to exempt in any manner resident or staff physicians of hospitals, from the licensure requirements of KRS 311.530 to 311.620]~~. A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620; or

(d) Physicians employed by a sports entity visiting Kentucky for a specific sporting event when the physician holds an active medical or osteopathic license in another state and limits the practice of medicine in Kentucky to medical treatment of the members, coaches, and staff of the sports entity that employs the physician.

Section 4. KRS 311.617 is amended to read as follows:

The board may enter into a contractual agreement with a nonprofit corporation or a medical professional association for the purpose of creating, supporting, and maintaining a ***program***~~[committee]~~ to be designated as the Kentucky ***Physicians Health Foundation***~~[Committee on Impaired Physicians]~~. The board may promulgate administrative regulations subject to the provisions of KRS Chapter 13A to effectuate and implement any ***program***~~[committee]~~ formed pursuant to this section. The board may expend any funds it deems necessary to adequately provide for operational expenses of any ***program***~~[committee]~~ formed pursuant to this section.

SECTION 5. A NEW SECTION OF KRS 311.840 TO 311.862 IS CREATED TO READ AS FOLLOWS:

(1) Whenever, in the opinion of the executive director, based upon verified information contained in the application, an applicant for a certificate to practice as a physician assistant is eligible therefor under subsections (1) and (2) of KRS 311.844, the executive director may issue to the applicant, on behalf of the board, a temporary certificate which shall entitle the holder to practice as a physician assistant for a maximum of six (6) months from the date of issuance unless the temporary certificate is canceled by the executive director, who may cancel it at any time, without a hearing, for reasons deemed sufficient with appropriate consultation with the president, and who shall cancel it immediately upon direction by the board or upon the board's denial of the holder's application for a regular certificate. The temporary certificate shall not be renewable.

(2) The executive director shall present to the board the application for certification made by the holder of the temporary certificate. If the board issues a regular certificate to the holder of a temporary certificate, the fee paid in connection with the temporary certificate shall be applied to the regular certificate fee.

(3) If the executive director cancels a temporary certificate, he shall promptly notify, by United States certified mail, the holder of the temporary certificate, at the last known address on file with the board. The temporary certificate shall be terminated and of no further force or effect three (3) days after the date the notice was sent by certified mail.

Approved April 2, 2004

CHAPTER 36

(HB 519)

AN ACT relating to retirement.

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

Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.510 to 16.652, unless the context otherwise requires:

(1) "System" means the State Police Retirement System created by KRS 16.510 to 16.652;

(2) "Board" means the board of trustees of the Kentucky Retirement Systems;

(3) "Employer" or "State Police" means the Department of State Police, or its successor;

(4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;

(5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;

(6) "Service" means the total of current service and prior service;

(7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.510 to 16.652, and any other amounts the member shall have contributed, including interest credited;

(8) "Creditable compensation" means all salary and wages, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's ***total*** service with the ***system in which it is recorded if it is equal to or greater than one thousand dollars ($1,000)*** ~~[employer]~~. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4);

(9) "Final compensation" at any time means the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

(10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;

(11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(12) "Retirement allowance" means the retirement payments to which a retired member is entitled;

(13) "Actuarially equivalent benefits" means benefits which are of equal value when computed upon the basis of actuarial tables adopted by the board, except that, in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of State Police;

(15) "Normal retirement date" means the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959;

(16) "Disability retirement date" means the first day of the month following ***the last day of paid employment*** ~~[total and permanent disability or hazardous disability]~~;

(17) "Dependent child" means a child ***in the womb*** ~~[en ventre sa mere]~~ and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);

(18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.510 to 16.652;

(19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;

(20) "Early retirement date" means the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service;

(21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;

(22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;

(23) "Hazardous disability" as used in KRS 16.510 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(29) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;

(30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;

(31) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;

(32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543; and

(34) "Month" means a calendar month.

Section 2. KRS 16.510 is amended to read as follows:

There is hereby created and established:

(1) A retirement system for state police to be known as the "State Police Retirement System" by and in which name it shall, pursuant to the provisions of KRS 16.510 to 16.652, transact all of its business, and shall have the powers and privileges of a corporation; and

(2) A ~~[state]~~fund, to be known as the "State Police Retirement Fund," which shall consist of all the assets of the system as set forth in KRS 16.555. ***All assets received in the fund shall be deemed trust funds to be held and applied solely as provided in KRS 16.505 to KRS 16.652.***

Section 3. KRS 16.578 is amended to read as follows:

(1) If a member, eligible to retire as provided in KRS 16.576, dies at any time before the first benefit payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly which shall be equal to the benefit that would have been paid had the member retired immediately prior to his date of death and elected to receive payments under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.

(2) If a member in active employment or on authorized leave of absence with five (5) or more years of service dies at any time before his normal retirement date and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equal to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at the date of his death, had the member been eligible for retirement and had he chosen benefits payable under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.

(3) If a member, not in active employment nor on authorized leave of absence with twelve (12) or more years of service, dies at any time before his normal retirement date and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equal to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at the date of his death, had the member been eligible for retirement and had he chosen benefits payable under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.

(4) An alternative calculation of benefits payable to the beneficiary under subsection (1), (2) or (3) of this section shall be determined by computing an annual benefit payable commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive based on his years of service and final compensation at the date of his death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%) and the actuarial equivalent payable for one hundred twenty (120) months certain shall be determined, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635.

(5) If the member, subject to subsection (1), (2), (3), or (4) of this section had on file a written designation of multiple beneficiaries, or his estate, trust, or trustee, the multiple beneficiaries by consensus or the administrator or executor of the estate or trustee may elect to receive the actuarial equivalent to the benefit allowable under subsection (1), (2), (3), or (4) of this section given the assumptions that the beneficiary's age is the same as the member's, and that the member had chosen benefits payable monthly for sixty (60) months certain, or one hundred and twenty (120) months certain, or an actuarial equivalent refund.

(6) The beneficiary may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2) for a period of sixty (60) months. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the multiple beneficiaries by consensus, trustee, executor, or administrator of the estate may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2), assuming the beneficiary's age to be the same as the member's, for a period of sixty (60) months.

(7) In the case of a single beneficiary who is a person, the highest monthly benefit determined under subsection (1), (2), (3), (4), or (6) of this section for a life annuity, for payments for sixty (60) months certain, for payments for one hundred twenty (120) months certain, for the actuarial equivalent refund or for the beneficiary Social Security payment shall be tendered to the beneficiary. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the highest monthly benefit determined under subsection (1), (2), (3), (4), (5), or (6) of this section for payments for sixty (60) months certain or one hundred and twenty (120) months certain or the actuarial equivalent refund shall be tendered to the multiple beneficiaries, trustee, administrator, or executor of the estate.

Section 4. KRS 16.582 is amended to read as follows:

(1) (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.

(b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.

(c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.

(d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.

(2) Any person may qualify to retire on disability, subject to the following:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;

(b) ***For a person whose membership date is prior to August 1, 2004,*** the person shall not be eligible for an unreduced retirement allowance;

(c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and

(e) A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.

(3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(b) The incapacity is deemed to be permanent; and

(c) The incapacity does not result directly or indirectly from:

1. Injury intentionally self-inflicted while sane or insane;

2. Injury or disease resulting from military service; or

3. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:

a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

(4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.

2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.

(b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

(c) The person's physical exertion requirements shall be determined based on the following standards:

1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.

4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is

deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

(5) The disability retirement allowance shall be determined as provided in KRS 16.576, ***except*** ~~[subject to the following:~~

~~(a)]~~if the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years;

~~[(b) If the member's total service credit on his last day of paid employment is twenty (20) or more years, then his total service credit shall be used.]~~

(6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:

(a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and

(b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.

(7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.

(8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.

(9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

Section 5. KRS 16.642 is amended to read as follows:

(1) The board shall be the trustee of the several funds created by KRS 16.505 to 16.652 and shall have full power to invest and reinvest such funds, subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state, except that the board may, at its discretion, purchase common stock in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

(2) All~~[registered]~~ securities acquired under authority of KRS 16.505 to 16.652 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 287.225, and every change in registration, by reason of sale or assignment of such securities shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems.

(3) The board, in keeping with its responsibility as trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.

Section 6. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

(1) Cessation of membership, as provided for by KRS 61.535;

(2) Medical examiners and hearing procedures, as provided for by KRS 61.665;

(3) Actuarial bases, as provided for by KRS 61.670;

(4) Duties of the employer, as provided for by KRS 61.675;

(5) Exemption of benefits of the system for taxation, as provided for by KRS 61.690;

(6) Retirement allowance increase, as provided for by KRS 61.691;

(7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);

(8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;

(9) Year of service credit, as provided for by KRS 61.545;

(10) Refund of contributions, death after retirement, as provided by KRS 61.630;

(11) Custodian of fund, payments made, when, as provided for by KRS 61.660;

(12) Credit for service prior to membership date, as provided for by KRS 61.526;

(13) Transfer of dormant accounts, as provided for by KRS 61.626;

(14) Member's account, confidential, as provided for by KRS 61.661;

(15) Cessation of membership, loss of benefits, as provided for by KRS 61.550;

(16) Correction of errors in records, as provided for by KRS 61.685;

(17) Maximum disability benefit, as provided for by KRS 61.607;

(18) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;

(19) Employer contributions, as provided for by KRS 61.565;

(20) Reinstatement of lost service credit, purchase of service credit, interest paid, and delayed contribution and installment payments, as provided for by KRS 61.552;

(21) Reciprocal arrangement between systems, as provided by KRS 61.680;

(22) Refund of contributions, conditions, as provided by KRS 61.625;

(23) Hospital and medical insurance plan, as provided by KRS 61.702;

(24) Death benefit, as provided by KRS 61.705;

(25) Disability retirement allowance, reduction, and discontinuance, as provided by KRS 61.615;

(26) Service credit, Armed Forces, as provided by KRS 61.555;

(27) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;

(28) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;

(29) Retirement of persons in hazardous positions, as provided for by KRS 61.592;

(30) Direct deposit of recipient's retirement allowance as provided in KRS 61.623;

(31) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;

(32) Payment of small amounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;~~[and]~~

(33) Suspension of retirement payments on reemployment, reinstatement, recomputation of allowance, waiver of provisions in certain instances, reemployment in a different position, as provided for by KRS 61.637***; and***

(34) Medical examination and financial review after disability retirement, staff review, as provided in Section 17 of this Act.

Section 7. KRS 61.510 is amended to read as follows:

As used in KRS 61.515 to 61.705, unless the context otherwise requires:

(1) "System" means the Kentucky Employees Retirement System created by KRS 61.515 to 61.705;

(2) "Board" means the board of trustees of the system as provided in KRS 61.645;

(3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.515 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;

(4) "Examiner" means the medical examiners as provided in KRS 61.665;

(5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, ***interim,*** and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.515 to 61.705;

(6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;

(7) "State" means the Commonwealth of Kentucky;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he serves in the position;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he served in the position prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;

(12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), except that for members of the General Assembly, it shall mean an assumed salary of twenty-seven thousand five hundred

dollars ($27,500) per annum which shall include per diem and expense payments authorized by KRS Chapter 6. The creditable compensation of members, officers, and employees of the General Assembly shall be calculated as having been received in equal amounts for each month of the year. A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's ***total*** service with the ***system in which it is recorded if it is equal to or greater than one thousand dollars ($1,000)*** ~~[employer]~~. In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4);

(14) "Final compensation" of a member means:

(a) For a member who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12), except that for members of the General Assembly who retire pursuant to KRS 61.600, or who die in office, "final compensation" shall be twenty-seven thousand five hundred dollars ($27,500). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used; or

(b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance; or

(c) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). In the case of members of the General Assembly, the "final rate of pay" shall be the creditable compensation. The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are from time to time adopted by the board, except in cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.515 to 61.705;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150***. The term shall also apply to*** ~~[and the]~~ assistants ***who were*** ~~[if]~~ employed by the General Assembly ***for at least one (1) regular legislative session prior to the effective date of this Act, who elect to participate in the retirement system, and who serve*** for at least six (6) regular legislative sessions***. Assistants hired after the effective date of this Act shall be designated as interim employees***;

(21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;

(b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;

(d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and

(e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;

(22) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

(23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;

(24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;

(25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;

(27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded past service liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded past service liability shall be projected to be fully amortized at the conclusion of the set period;

(29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;

(30) "Person" means a natural person;

(31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;

(33) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;

(34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543; and

(35) "Month" means a calendar month.

Section 8. KRS 61.515 is amended to read as follows:

There is hereby created and established:

(1) A retirement system for employees to be known as the "Kentucky Employees Retirement System" by and in which name it shall, pursuant to the provisions of KRS 61.510 to 61.705, transact all its business and shall have the powers and privileges of a corporation; and

(2) A~~[state]~~ fund, called the "Kentucky Employees Retirement Fund," which shall consist of all the assets of the system as set forth in KRS 61.570 to 61.585. ***All assets received in the fund shall be deemed trust funds to be held and applied solely as provided in KRS 61.510 to KRS 61.705.***

Section 9. KRS 61.542 is amended to read as follows:

(1) Prior to the time the first retirement allowance payment is issued by the State Treasurer:

(a) Each member may designate ***on the form prescribed by the board*** one (1) or more persons as a principal beneficiary or beneficiaries and one (1) or more persons as contingent beneficiary or beneficiaries; or each member may designate his estate as principal or contingent beneficiary; or each member may designate a trust or trustee as principal or contingent beneficiary.

(b) If multiple persons are designated, the member shall indicate the percentage of total benefits each person is to receive.

1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries. ***If the percentages indicated do not total one hundred percent (100%), each beneficiary shall receive an increased or decreased percentage which is proportional to the percentage allotted him or her by the member.***

2. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member.

3. If any or all multiple beneficiaries die after the first retirement allowance has been issued by the State Treasurer, the deceased beneficiary's estate shall receive a lump-sum payment which is the actuarial equivalent of the remaining monthly payments the deceased beneficiary was entitled to receive.

(c) This designation shall remain in full force and effect until changed by the member, except:

1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree.

2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary.

3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one (1) person, his estate, or a trust or trustee, shall supersede the designation of all previous beneficiaries***, except that if the notification of retirement is withdrawn, invalid, or voided, the prior beneficiary designation on file with the system shall remain in full force and effect until changed by the member***.

4. When a request for refund has been filed at the retirement office, the member's estate shall become the member's beneficiary if the member dies.

(2) If the member dies prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:

(a) If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.

(b) If the principal beneficiary is the one (1) person who is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.

(c) If the member is survived by his principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries.

(d) If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary.

(3) Prior to the member's retirement, a monthly benefit payable for life shall not be offered if the beneficiary is more than one (1) person, the member's estate, or a trust or trustee.

(4) When a notification of retirement has been filed at the retirement office:

(a) The designation of beneficiary on the notification of retirement shall supersede the designation of all previous beneficiaries.

(b) The beneficiary designated by the member on the member's notification of retirement shall be one (1) person, the member's estate, or a trust or trustee.

(c) If the death of the beneficiary named on the notification of retirement precedes the date the first benefit payment has been issued by the State Treasurer, the member may designate another beneficiary on the member's notification of retirement.

(5) After the first retirement allowance payment is issued by the State Treasurer and subsequent thereto, a member shall not have the right to change his beneficiary, except that:

(a) The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member.

(b) The estate of the retired member becomes the beneficiary if the retired member had designated a person as beneficiary who was the spouse or who later married the member and they were divorced on the date of the retired member's death. An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried to each other as of the date of the retired member's death.

(c) The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b).

Section 10. KRS 61.545 is amended to read as follows:

(1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.

(2) (a) Employees participating in one (1) of the state-administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state-operated school under KRS Chapter 167, ***a participating community action agency,*** or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, and who receive service credit for less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee may purchase the service credit by paying the retirement system a delayed contribution payment. Employees who have service credit prior to July 1, 1992, or their employers, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board may purchase service credit on behalf of the employee for previous years by paying the retirement system the delayed contribution payment.

(b) The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay fifty percent (50%) of the cost and the employee shall pay fifty percent (50%) of the cost. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.

(c) If the employee has purchased service credit under this subsection based on months reported by the employer for the fiscal year, and an audit of the employee's account reduces the number of months of service credit for which the employee is eligible to no fewer than nine (9) months, the employee shall retain credit for the months purchased unless the employee is ineligible for any service in the fiscal year. The employee shall be eligible to purchase the additional months under this subsection to total one (1) year.

(3) (a) An employee who is simultaneously eligible for membership in more than one (1) retirement system administered by the Kentucky Retirement Systems may, at his option, choose to participate in only one (1) of those systems. The choice, once made, shall remain in effect so long as the employee is eligible for membership in more than one (1) system.

(b) If the employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.

(c) If the employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation.

Section 11. KRS 61.552 is amended to read as follows:

(1) Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(2) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems***, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and*** who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current

service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(3) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems***, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and*** who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(4) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems***, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems,*** may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(5) (a) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems***, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems,*** may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.

(b) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates a delayed contribution payment, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

(6) After August 1, 2000, service credit obtained under the subsections of this section which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582 or 61.600.

(7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.

(8) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not participate in a defined benefit or defined contribution retirement program at the university may obtain credit in the employee's account in the County

Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

(9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);

(b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);

(c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;

(d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;

(e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.

(10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.

(11) Employees who served as assistants to officers and employees of the General Assembly who have at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

(12) (a) Effective August 1, 1988, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for interim, seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined as a delayed contribution payment for the period of time involved, which shall not be picked up by the employer as described in KRS 61.560(4).

(b) Any non certified27 employee of a school board who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a

calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined as a delayed contribution payment, which shall not be picked up by the employer as described in KRS 78.610(4).

(13) A retired member, who is contributing to one (1) of the state-administered retirement programs under the provisions of KRS 61.637(1) to (4) and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:

(a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or

(b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.

(14) Any employee participating in one (1) of the systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(15) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of ***authorized***~~[approved]~~ maternity leave, unpaid leave authorized under the Federal Family and Medical Leave Act, or for any period of ***authorized***~~[approved]~~ sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, or 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.

(a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. Once multiple service purchases have been combined in an installment purchase, the employee may not separate the purchases or pay a portion of one (1) of the purchases. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.

(b) One (1) year of installment payments shall be made for each one thousand dollars ($1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.

(c) The employee shall pay the installments by payroll deduction. Upon notification by the retirement system, the employer shall report the installment payments either monthly or semimonthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee

contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.

(d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

(e) If the employee elects to stop the installment payments, dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal of the purchase by lump sum, except that payment by the member shall be made prior to the effective retirement date. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.

(f) If the employer does not report installment payments on an employee for sixty (60) days, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.

(g) If payments have ceased under paragraph (e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.

(17) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, or 78.520 to 78.852 by transferring funds through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, or through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder. Service credit may also be purchased by a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. sec. 402(c) and 26 U.S.C. sec. 408(d)(3). The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.

(18) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is age sixty-five (65) or older and has forty-eight (48) months of service credit or, if younger, who has sixty (60) months of service credit in systems administered by Kentucky Retirement Systems may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay a delayed contribution payment. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

(19) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of

service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay a delayed contribution payment. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

(20) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.

(21) An employee participating in any retirement system administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems, and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates a delayed contribution payment. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.

(22) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be a delayed contribution payment, which shall not be picked up by the employer as described in KRS 61.560(4).

(23) (a) Any person who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or KRS 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.

(b) Any employee participating in one (1) of the state-administered retirement systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(24) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or KRS 78.610(4), by the employer.

(25) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems prior to July 15, 2002, who has accrued at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems and who has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.510 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for as a delayed contribution payment. The payment shall not be picked up, as described in KRS 16.545(4), KRS 61.560(4), KRS 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments. The service purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 61.575, shall be refunded.

(26) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in the systems administered by Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.

(27) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems may obtain current service credit for up to forty-eight (48) months for his or her period of service as a Domestic Relations Commissioner by paying to the retirement system a delayed contribution payment no later than December 31, 2002. Payment may be made by lump sum or under an installment agreement. The payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(28) The board of trustees is authorized to establish a program, subject to a favorable ruling from the Internal Revenue Service, to provide for the purchase of service credit under any of the provisions of KRS 16.510 to 16.552, 61.515 to 61.705, and 78.520 to 78.852, pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2).

(29) An employee may obtain credit for regular full-time service with an agency prior to August 1, 1998, for which the employee did not receive credit due to KRS 61.637(1), by paying a delayed contribution. The payment shall not be picked up by the employer, except as provided in subsection (28) of this section, and shall be credited to the employee's second retirement account. Service credit obtained under this subsection shall not be used in determining benefits under KRS 61.702. The employee may purchase credit for service prior to August 1, 1998, if:

(a) The employee retired from one (1) of the retirement systems administered by the Kentucky Retirement Systems and was reemployed prior to August 1, 1998, earning less than the maximum permissible earnings under the Federal Social Security Act;

(b) The employee elected to participate in a second retirement account effective August 1, 1998, in accordance with KRS 61.637(7); and

(c) The employee has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in a second account in the systems administered by Kentucky Retirement Systems.

(30) An employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for the service in a regular full-time position otherwise creditable under the

Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System for service in the United States government, other than service in the Armed Forces, for which service is not otherwise given, by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

Section 12. KRS 61.555 is amended to read as follows:

(1) After August 1, 1998, any employee entering the Armed Forces of the United States after he first participates in the system, who joins the Armed Forces within three (3) months of the last day of paid employment, being on leave of absence from service and not withdrawing his accumulated contributions, shall be credited for retirement purposes with service credit and creditable compensation as provided in 38 U.S.C. sec. 4318 for his period of active military duty in the Armed Forces of the United States, not to exceed six (6) years, if his discharge therefrom is honorable and he returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after completion of the period of active military duty, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.

(2) After August 1, 1998, any employee who, prior to the date he first participated in the system, terminated his employment with an agency participating in one (1) of the systems administered by the Kentucky Retirement Systems and within three (3) months entered the Armed Forces of the United States and who returns to work with an employer participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems within two (2) years after completion of the period of active military duty, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge, shall be credited for retirement purposes with service credit and creditable compensation as provided in 38 U.S.C. sec. 4318 for his period of active military duty in the Armed Forces, not to exceed six (6) years.

(3) Any National Guard technician involuntarily serving on active military duty during the period between January 26, 1968, and January 1, 1970, who completes his eight (8) years' service while on military duty during this period, shall have that portion of his active military duty, necessary to the completion of eight (8) years' current service, credited to his account, as current service without having to meet the reemployment criteria.

(4) Any employee eligible for retirement as prescribed in KRS 61.559 or any employee upon completion of five (5) years of service shall receive current service credit for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is honorable and he has not been credited with the service under subsections (1) to (3) of this section if he pays thirty-five percent (35%) of the cost of the service based on the formula adopted by the board. The payment by the member shall not be picked up by the employer, as described in KRS 61.560(4), and shall be deposited to his individual member's account. The remaining sixty-five percent (65%) shall be paid by the state from funds appropriated specifically for the purpose and these payments shall be deposited to the respective retirement allowance accounts. If no funds are available in the special appropriation account, the system shall not accept employee payments until funds are available in the account.

(5) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems eligible to purchase military service credit under subsection (4) of this section shall receive current service credit for active military duty as provided under subsection (4) of this section without payment of the current employee contribution ratio if the member was taken prisoner by a hostile power at any time during active military service.

(6)~~[(a)]~~ Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or if younger who has sixty (60) months of service, at least twelve (12) of which are current service shall receive current service for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is not dishonorable and he has not been credited with the service under subsections (1) to (4) of this section, by paying the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.

~~[(b) Notwithstanding any other provision to the contrary, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems age sixty-five (65) or older who has~~

~~at least one hundred eighty (180) months of service in the systems administered by Kentucky Retirement Systems shall receive current service for a maximum of four (4) years for his period of active military duty in the Armed Forces of the United States, if his discharge therefrom is not dishonorable and he has not been credited with the service under this section, by paying the retirement system fifty percent (50%) of the cost under KRS 61.5525 no later than December 31, 2002. Payment may be made by lump sum or under an installment agreement under KRS 61.552. The payment shall not be picked up by the employer as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.]~~

(7) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems age sixty-five (65) or older who has forty-eight (48) months of service, at least twelve (12) of which are current service, or if younger who has sixty (60) months of service, at least twelve (12) of which are current service, shall receive one (1) month of current service for each six (6) months of service in the National Guard or the military reserves of the United States, by paying the retirement system a delayed contribution payment. The service shall be treated as service earned prior to participation in the system and shall not be included in the member's final compensation. Payment may be made by lump sum or in increments. The payment shall not be picked up by the employer, as described in KRS 16.545(4), 61.560(4), or 78.610(4) and shall be deposited in the member's individual retirement account.

Section 13. KRS 61.590 is amended to read as follows:

(1) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, 78.510 to 78.852, and 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, notification of retirement, giving his name, address, Social Security number, last day of employment, and other information the system may require. The notification of retirement shall not be filed more than six (6) months before the member's effective retirement date.

(2) Within ten (10) days of the receipt of the notification of retirement form submitted within two (2) months of the effective date of retirement, the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary. If the member submits a notification of retirement form more than two (2) months prior to the effective retirement date, the system shall provide the estimated retirement allowance within forty-five (45) days of the member's effective retirement date.

(3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he has checked the plan of his choice, signed the document and had his signature witnessed. A member or beneficiary may not select a different plan after the first retirement allowance payment has been issued by the State Treasurer.

(4) A member or beneficiary choosing a monthly payment plan shall have on file at the retirement office his birth certificate or other acceptable evidence of date of birth. If a survivorship plan is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.

(5) The effective date of normal retirement shall be the first month following the month in which employment was terminated from a regular full-time position. The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred. The effective date of early retirement shall be the first month following the month the notification of retirement form is filed at the retirement office or a future month designated by the member, if employment in a regular full-time position has been terminated and if the member files the "Estimated Retirement Allowance Form" no later than six (6) months following termination.

(6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.

(7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the first retirement allowance has been issued by the State Treasurer and his beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

Section 14. KRS 61.595 is amended to read as follows:

(1) Effective July 1, 1990, upon retirement at normal retirement date or subsequent thereto, a member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) for the County Employees Retirement System and one and ninety-seven hundredths percent (1.97%) for the Kentucky Employees Retirement System of final compensation multiplied by the number of years of service credit, except that:

(a) Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one of the state-administered retirement systems and who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account;

(b) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars ($240) multiplied by the number of years of service as a member of the General Assembly;

(c) The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;

(d) Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 Regular Session are eligible for an increased retirement allowance of two hundred forty dollars ($240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication;

(e) The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars ($512); and

(f) The annual retirement allowance for a member of the Kentucky Employees Retirement System or County Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.

(2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.

(b) A member of the Kentucky Employees Retirement System or the County Employees Retirement System who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a

Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in KRS 61.559(2)(c) and (d) to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by KRS 61.559(2)(c) and (d) or to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).

(3) The retirement allowance shall be calculated by using the member's known creditable compensation prior to his last month's employment and an estimate of his creditable compensation during the last month he was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.

(4) A new calculation shall be made when the official report has been received of the member's creditable compensation during his last month's employment. However, the retirement allowance determined in accordance with subsection (3) of this section shall be the official retirement allowance unless the new calculation derives an amount which is two dollars ($2) greater or less than the amount of the initial retirement payment. If the member or beneficiary chose an actuarial equivalent refund payment option, the amount of estimated retirement allowance shall be the official retirement allowance unless the new calculation produces an amount which is one hundred dollars ($100) greater or less than the amount of the initial retirement payment.

Section 15. KRS 61.600 is amended to read as follows:

(1) Any person may qualify to retire on disability, subject to the following conditions:

(a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1);

(b) ***For a person whose membership date is prior to August 1, 2004,*** the person shall not be eligible for an unreduced retirement allowance;

(c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 61.510, in a regular full-time position, as defined in KRS 61.510 or 78.510; ***and***

(d) The person shall receive a satisfactory determination pursuant to KRS 61.665**.**~~[;]~~

(2)~~[(e)]~~ A person's disability ***reapplication***~~[application]~~ based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The ***reapplication***~~[application]~~ shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position~~[; and~~

~~(f) A person who had previously applied for and was denied disability benefits by the board on or before December 31, 1996, because of the pre-existing disease of poliomyelitis may file a new application for disability benefits no later than December 31, 2002, at the office of the retirement systems, and subsection(2)(d) of this section shall not apply to the new application if the person applying under this paragraph has at least ten (10) years of current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems~~]**.**

(3)~~[(2)]~~ Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:

(a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered;

(b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

(c) The incapacity is deemed to be permanent; and

(d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.

(4) ~~[(3)]~~ Paragraph (d) of subsection ***(3) of this section*** ~~[(2)]~~ shall not apply if:

(a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or

(b) The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.

(5) ~~[(4)]~~ (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.

2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.

(b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

(c) The person's physical exertion requirements shall be determined based on the following standards:

1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.

2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.

3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.

4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

Section 16. KRS 61.605 is amended to read as follows:

Upon disability retirement, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the ***person's***~~[employee's]~~ total service beginning with his last date of paid employment and continuing to his sixty-fifth birthday; however, the maximum service credit added shall not exceed the total service the ***person***~~[employee]~~ had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, ***a person***~~[an employee]~~ has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to twenty-seven (27) years.

Section 17. KRS 61.610 is amended to read as follows:

(1) Once each year following the retirement of a ***person***~~[member]~~ on a disability retirement allowance, or less frequently as determined by the board's medical examiner but not less than once every five (5) years, the system may require the person, prior to his normal retirement date, to undergo ***an employment***~~[a financial]~~ and medical staff review and, if necessary, be required to ***file at the retirement office on the review form prescribed by the board***~~[submit]~~ current ***employment information and current*** medical information ***for the bodily injury, mental illness, or disease for which he receives a disability retirement allowance. The person shall have one hundred eighty (180) days from the day the system mailed the review form to the person's last address on file in the retirement office to file at the retirement office the review form and the current employment and medical information. The person shall certify to the retirement office that the review form, including current employment and medical information, is ready to be evaluated by the medical examiner in accordance with Section 18 of this Act***.

(2) If, after good faith efforts, the person informs the system that he has been unable to obtain the employment or medical information, the system shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records.

(3) If ***the person fails or***~~[he]~~ refuses~~[to submit]~~ to ***file at the retirement office the review form, including the current employment and medical information***~~[a medical examination]~~, his retirement allowance shall be discontinued ***or reduced on the first day of the month following the expiration of the one hundred eighty (180) days from the day the system mailed the review form to the person's last address on file in the retirement office. The system shall send notice of the discontinuance or reduction of the disability retirement allowance by United States first class mail to the person's last address on file in the retirement office. If the person's benefits are discontinued or reduced under this section, his rights to further disability retirement allowances shall cease, except as provided by Section 18 of this Act***~~[until his withdrawal of refusal, and if the refusal continues for one (1) year, all his rights to any further disability allowance shall cease]~~.

~~[(2) Disability retirees whose effective retirement date is August 1, 1988, or thereafter shall undergo an annual financial and medical staff review and, if necessary, be required to submit current medical information.]~~

Section 18. KRS 61.615 is amended to read as follows:

(1) If ***the board's medical examiner determines that*** a recipient of a disability retirement allowance is, prior to his normal retirement date, employed in a position with the same or similar duties***, or in a position with duties requiring greater residual functional capacity and physical exertion,*** as the position from which he was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the ***system***~~[board]~~ may reduce ***or discontinue*** the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the system of any employment; otherwise, the system shall have the right to recover payments ***of a disability retirement allowance*** made during the employment.

(2) If ***the board's medical examiner determines***~~[it is determined]~~ that ***a***~~[any disabled]~~ recipient ***of a disability retirement allowance*** is***, prior to his normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he receives a disability retirement allowance, the board may reduce or discontinue the retirement allowance***~~[able to be employed in a position with the same or similar duties as the position from which he was disabled, and if the board finds that the person refused any employment considered~~

~~by the board suitable to his capacity, he shall not be entitled to any allowance during the continuance of his refusal, unless in the opinion of the board his refusal was justified~~].

(3) The system shall have full power and exclusive authority to reduce or discontinue a disability retirement allowance and the system shall utilize ***the***~~[procedures consistent with KRS 61.665, including]~~ services of ***a medical examiner as provided in Section 26 of this Act***~~[an examiner]~~, in determining ***whether to continue, reduce, or discontinue a disability***~~[the amount of reduction in]~~ retirement allowance under this section.

(a) The system shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the board's licensed mental health professional to assist in determining the level of the mental impairment.

(b) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.

(c) The medical examiner shall recommend that disability retirement allowance be continued, reduced, or discontinued.

1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.

2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the system shall send notice of the recommendation by United States first class mail to the person's last address on file in the retirement office.

a. The person shall have sixty (60) days from the day that the system mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the retirement office that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the recommendation of the medical examiner to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for a formal hearing.

b. If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.

(d) The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.

1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.

2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the system shall send notice of this recommendation by United States first class mail to the person's last address on file in the retirement office.

a. The person shall have sixty (60) days from the day that the system mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.

b. If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.

(e) Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the system, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.

(f) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in paragraph (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.

(g) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the system mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.

(h) Notwithstanding any other provisions of this section, the system may require the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his rights to further disability retirement allowance shall cease.

(i) All requests for a hearing pursuant to this section shall be made in writing.

(4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

(5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.

(6) ~~[(4)]~~ If a disability retirement allowance is reduced or discontinued, the ***person*** ~~[member]~~ may apply for early retirement benefits as provided under KRS 61.559, subject to the following provisions:

(a) The ***person*** ~~[member]~~ may not change his beneficiary or payment option;

(b) If the ***person*** ~~[member]~~ has returned to employment with an employer participating in the system from which he retired, the service and creditable compensation shall be used in recomputing his benefit, except that the ***person's*** ~~[member's]~~ final compensation shall not be less than the final compensation last used in determining his retirement allowance;

(c) The benefit shall be reduced as provided by KRS 61.595(2);

(d) The ***person*** ~~[member]~~ shall remain eligible for reinstatement of his disability allowance upon reevaluation by the medical review board until his normal retirement age***. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. If the person establishes that the disability benefits should be reinstated, the retirement system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits***; and

(e) Upon attaining normal retirement age, the ***person*** ~~[member]~~ shall receive the higher of either his disability retirement allowance or his early retirement allowance.

(7) ~~[(5)]~~ No disability retirement allowance shall be reduced or discontinued by the system after the ***person's*** ~~[member's]~~ normal retirement date except in case of reemployment as provided for by KRS 61.637. If a disability retirement allowance has been reduced or discontinued, except if the ***person*** ~~[member]~~ is

reemployed as provided for by KRS 61.637, the retirement allowance shall be reinstated upon attainment of the ***person's***~~[member's]~~ normal retirement age to the retirement allowance prior to adjustment. No reinstated payment shall be less than the ***person***~~[recipient]~~ is receiving upon attainment of the ***person's***~~[member's]~~ normal retirement age.

Section 19. KRS 61.621 is amended to read as follows:

(1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies or becomes ***totally and permanently*** disabled ***to engage in any occupation for remuneration or profit*** as a result of a duty-related injury.

(2) (a) For purposes of this section, "duty-related injury" means:

1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or

b. A single act of violence committed against the employee that is found to be related to his job duties, whether or not it occurs at his job site; and

2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

(b) Duty-related injury does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.

(3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account.

(b) The surviving spouse may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars ($10,000) and a monthly payment equal to twenty-five percent (25%) of the member's monthly final rate of pay beginning in the month following the member's death and continuing each month until death.

(4) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay. For purposes of determining disability, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.

(5) In the period of time following a member's death or disability during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the deceased or disabled member's monthly final rate of pay; however, total maximum dependent children's benefits shall not exceed forty percent (40%) of the deceased or disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of death or disability of the member and shall be payable to the beneficiaries, or to a legally appointed guardian, or as directed by the system. Benefits for death as a result of a duty-related injury shall be payable under this subsection notwithstanding an election by a beneficiary to withdraw the deceased member's accumulated contributions as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.

(6) This section shall be known as "The Fred Capps Memorial Act."

Section 20. KRS 61.623 is amended to read as follows:

(1) A recipient who begins receiving a retirement allowance August 1, 2000, or after, from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement

System shall have the retirement allowance paid by electronic fund transfer to a financial institution designated by the recipient.

(2) When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an authorization for deposit of retirement payment form to the recipient to have the monthly retirement allowance deposited to an account in a financial institution.

(3) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(4) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new authorization for deposit of retirement payment form and filing the form at the retirement office in Frankfort. The last authorization for deposit of retirement payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(5) (a) A recipient may request to be paid by check issued by the State Treasurer instead of by electronic transfer by completing and filing at the retirement office a request for payment by check form.

(b) The request shall be approved if:

1. The recipient certifies that he does not currently have an account with a financial institution; ***or***

2. The recipient's bank certifies that it does not participate in the electronic funds transfer program~~[; or~~

~~3. The recipient shows that the requirement would create an undue hardship]~~.

(c) The retirement office shall, every five (5) years, require the recipient to certify that the original conditions under which he requested payment by check continue. If the original conditions do not exist, the recipient shall complete an authorization for direct deposit of retirement payment form and file it with the retirement office.

Section 21. KRS 61.630 is amended to read as follows:

(1) If a retired member who did not elect an optional retirement plan dies at any time after retirement but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to his accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the properly designated beneficiary. If a living person designated as the beneficiary predeceases the retired member, the estate shall become the beneficiary. If a spouse designated as the beneficiary is divorced from the retired member as of the member's death, the estate shall become the beneficiary.

(2) If a retired member who elected an optional retirement plan and his beneficiary both die at any time after retirement of the member but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the retired member's accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the last deceased, except that the retired member's estate shall receive the payment if the beneficiary was the spouse and they were divorced as of the date of the member's death. If the retired member and beneficiary die simultaneously, the estate of the retired member shall become the beneficiary.

(3) If a beneficiary receiving a lifetime retirement allowance under KRS 16.578 or 61.640 dies before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the member's accumulated contributions as of the date of the member's death, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the beneficiary.

(4) If a beneficiary receiving a retirement allowance for one hundred twenty (120) months certain under KRS ***16.576,*** 16.578***,*** or 61.640, ***or*** a beneficiary receiving a retirement allowance under~~[the life with ten (10) years certain option selected by the member under]~~ KRS 61.635(5), ***(6) or (7),***~~[or a beneficiary receiving a retirement allowance for the duration of ten (10) years certain as prescribed in KRS 16.576]~~ dies before receiving all payments under the plan, the executor or administrator of his estate ***shall***~~[may elect to]~~ receive a lump sum payment which shall be the actuarial equivalent to the remaining payments~~[, or the executor or administrator may elect to continue the remaining monthly payments to the estate of the beneficiary]~~.

(5) If the system is unable to verify a recipient's whereabouts or whether the recipient is living, the system shall suspend the recipient's retirement allowance. If the recipient is located, the system shall restore to the recipient all suspended retirement allowances.

Section 22. KRS 61.640 is amended to read as follows:

(1) If an employee who is of normal retirement age or greater is in the active employment of a participating agency, or on official leave from the agency, if the leave has been granted in accordance with the policy of the state Personnel Cabinet, with service credit of forty-eight (48) months or more, at least twelve (12) of which are current service, or if an employee of less than normal retirement age is in the active employment of a participating agency or on official leave from the agency, if the leave has been granted in accordance with the policy of the state Personnel Cabinet, with service credit of sixty (60) months, at least twelve (12) of which are current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file at the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.

(2) If a member not in the active employment of a participating agency, nor on official leave from the agency, with the service and age prescribed in KRS 61.559(2), dies before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.

(3) If a member, not in the active employment of a participating agency nor on official leave from the agency, with twelve (12) or more years of service credit at least one (1) of which is current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.

(4) An alternative calculation of benefits payable to the beneficiary under subsection (1), (2), or (3) of this section shall be determined by computing an annual benefit payable commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive based on his years of service and final compensation at the date of his death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4) then reduced by fifty percent (50%), and the actuarial equivalent payable for sixty (60) months certain and one hundred twenty (120) months certain and the actuarial equivalent refund shall be determined.

(5) If the member, subject to subsection (1), (2), (3), or (4) of this section had on file in the retirement office a written designation of multiple beneficiaries, his estate, trust, or trustee, the multiple beneficiaries by consensus, the administrator, or executor of the estate, or trustee may elect to receive the actuarial equivalent to the benefit allowable under subsections (1), (2), (3), or (4) of this section given the assumptions that the beneficiary's age is the same as the member's, and that the member had chosen benefits payable monthly for sixty (60) months certain, or one hundred and twenty (120) months certain, or an actuarial equivalent refund.

(6) Actuarial equivalent refund. The beneficiary may elect to receive a one (1) time lump-sum payment which shall be the actuarial equivalent to the amount payable under KRS 61.635(2) for a period of sixty (60) months. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the multiple beneficiaries by

consensus, trustee, executor, or administrator of the estate may elect to receive a one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2), assuming the beneficiary's age to be the same as the member's for a period of sixty (60) months.

(7) In the case of a single beneficiary, who is a person, the highest monthly benefit determined under subsection (1), (2), (3), (4), or (6) of this section for a life annuity or for payments for sixty (60) months certain or for payments for one hundred twenty (120) months certain or for the actuarial equivalent refund or for the~~[beneficiary]~~ Social Security ***adjustment option***~~[payment]~~ shall be tendered to the beneficiary. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the highest monthly benefit determined under subsection (1), (2), (3), (4), (5), or (6) of this section for payments for sixty (60) months certain or one hundred and twenty (120) months certain or the actuarial equivalent refund shall be tendered to the multiple beneficiaries, trustee, administrator, or executor of the estate.

(8) Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.

Section 23. KRS 61.645 is amended to read as follows:

(1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:

(a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he occupies the position of secretary under KRS 18A.015, except as provided under subsections (5) and (6) of this section;

(b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;

(c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;

(d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and

(e) Three (3) trustees, appointed by the Governor of the Commonwealth. Of the three (3) trustees appointed by the Governor, one (1) shall be knowledgeable about the impact of pension requirements on local governments.

(2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:

(a) To sue and be sued in its corporate name;

(b) To make bylaws not inconsistent with the law;

(c) To conduct the business and promote the purposes for which it was formed;

(d) To contract for investment counseling, actuarial, auditing, medical, and other professional or technical services as required to carry out the obligations of the board without limitation, notwithstanding the provisions of KRS Chapters 45, 45A, 56, and 57;

(e) To purchase fiduciary liability insurance;

(f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties without limitation, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and

(g) The board shall reimburse any trustee~~[or]~~ officer***, or employee*** for any legal expense resulting from a civil action arising out of the performance of his official duties.

(3) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than ***five (5)***~~[three (3)]~~ consecutive four (4) year terms. An elected trustee who has served ***five (5)***~~[three (3)]~~ consecutive terms may be elected again after an absence of four (4) years from the board.

(4) (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals;

(b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members;

(c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes;

(d) The ballots shall be distributed to the eligible voters by mail to their last known residence address;

(e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected;

(f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall sign and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot;

(g) The board's contracted auditing firm shall report in writing the outcome to the chair of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.

(5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the secretary of the Personnel Cabinet resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.

(6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.

(b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.

(7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars ($80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.

(8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director. It shall elect a chair and a vice chair. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.

(9) (a) The board of trustees shall appoint or contract for the services of an executive director and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A and 45A and KRS 64.640. The executive director shall be the chief administrative officer of the board.

(b) The board of trustees shall authorize the executive director to appoint the employees deemed necessary to transact the business of the system. For an appointee deemed to be in a policy-making position, the board shall determine the compensation and other terms of employment for the policy-making position without limitation of the provisions of KRS Chapter 18A. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and control of determining and maintaining an adequate complement of employees shall be under the exclusive jurisdiction of the board of trustees.

(c) Effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board. Employees of Kentucky Retirement Systems covered by the personnel system adopted by the board shall be:

1. Provided the same health insurance coverage as all other state government employees as provided in KRS 18A.225;

2. Eligible to participate in the deferred compensation system provided for all state government employees as provided in KRS 18A.250 to 18A.265;

3. Provided the same life insurance coverage provided all state employees as provided in KRS 18A.205 to 18A.215;

4. Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made in the performance of official duties in accordance with KRS Chapter 45;

5. Ensured equal employment opportunity regardless of race, color, gender, religion, national origin, disability, sexual orientation, or age;

6. Given those holidays and rights granted to state employees as provided in KRS 18A.190;

7. Paid a salary not less than the salary paid as of the date of transfer to the personnel system, unless voluntarily demoted or involuntarily demoted for cause;

8. Credited with all accumulated sick leave, compensatory time, and annual leave accumulated in accordance with KRS Chapter 18A, and for an employee leaving service, the system shall attest to the employee's accumulated sick leave, compensatory time, and annual leave which shall be credited with other state and county employers to the extent provided for by statute or policy. The Kentucky Retirement Systems may, at the discretion of the board, accept from other state and county employers all accumulated sick leave, compensatory time, and annual leave for an employee leaving a state or county employer and accepting employment with the Kentucky Retirement Systems. The executive branch shall accept from the Kentucky Retirement Systems all accumulated sick leave, compensatory time, and annual leave for an employee leaving the Kentucky Retirement Systems and accepting employment with the executive branch. The Kentucky Retirement Systems shall accept from the executive branch all accumulated sick leave, compensatory time, and annual leave for an employee leaving the executive branch and accepting employment with the Kentucky Retirement Systems;

9. Classified with status upon transfer to the personnel system on December 1, 2002, if the employee was classified with status as a merit employee under KRS Chapter 18A. Any employee of the Kentucky Retirement Systems transferred on December 1, 2002, during the probationary period before earning classified status as a merit system employee under KRS Chapter 18A shall transfer all accrued probationary time and the time shall be credited to the probationary time required to attain classified status in the personnel system;

10. Ensured a grievance appeal procedure and the employee's right to have a representative present at each step of the grievance procedure; and

11. Ensured of the right of appeal in a manner consistent with the provisions of KRS 18A.095 to the Kentucky Personnel Board and employees classified with status in the personnel system shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

(d) The board shall adopt by administrative regulation a fair, equitable, and comprehensive personnel policy with a minimum of the following provisions for the personnel system:

1. A code of conduct including provisions describing performance of duties, abuse of position, conflicts of interest, and outside employment;

2. An appointments plan including provisions describing the appointing authority, appointments, equal employment policy, sexual harassment policy, and drug-free workplace policy;

3. A classification plan including provisions describing class specifications, position actions, and employee actions;

4. A compensation plan based on qualifications, experience, and responsibilities and including provisions which describe a salary schedule, salary adjustments, salary advancements, and an employee suggestion program;

5. Separations, disciplinary actions, and appeal policies including provisions describing classified with status, exemptions from classified with status, layoffs, abolishment of position, dismissals and notification of dismissal, dismissals during probationary period, disciplinary actions, right of appeal, grievance and appeal procedures, and an employee grievance and appeal committee;

6. Service and benefits regulations including provisions describing hours of work, fringe benefits, workers' compensation, payroll deductions, holidays, inclement weather days, compensatory time, retirement, resignations, employee evaluations, and political activities; and

7. Leave policies including provisions describing special leave, annual leave, court leave and jury duty, military leave, voting leave, educational leave, sick leave, family medical leave, leave without pay, absence without leave, and blood donation leave.

(e) The board shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(f) The board shall establish a system of accounting.

(g) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9). The board shall have the authority to promulgate an administrative regulation to comply with any consent decrees entered into by the board in Civil Action No. 3:99CV500(C) in order to bring the systems into compliance with the Age Discrimination in Employment Act, 29 U.S.C. Section 621, et seq., as amended.

(10) All employees of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.

(11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.

(12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the executive director of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

(13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall

be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.

(14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.

(15) (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:

1. In good faith;

2. On an informed basis; and

3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.

(b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.

(c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or

3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.

(d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.

(e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:

1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and

2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.

(f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraphs (e)1. and (e)2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.

(g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.

(16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.

(17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.

Section 24. KRS 61.650 is amended to read as follows:

(1) (a) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such funds in accordance with federal law.

(b) The board may establish an investment committee whose members shall be appointed by the board chair. The investment committee shall have authority to implement policy and act on behalf of the board on all investment-related matters with full power to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds.

(c) A trustee***, officer, employee,*** or other fiduciary shall discharge duties with respect to the retirement system:

1. Solely in the interest of the members and beneficiaries;

2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;

3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;

4. Impartially, taking into account any differing interests of members and beneficiaries;

5. Incurring any costs that are appropriate and reasonable; and

6. In accordance with a good-faith interpretation of the law governing the retirement system.

(2) All~~[registered]~~ securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 287.225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems.

(3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.

(4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.

Section 25. KRS 61.660 is amended to read as follows:

(1) The State Treasurer shall be the custodian of the funds received under authority of KRS 61.510 to 61.705, 16.510 to 16.652 and 78.510 to 78.852 and shall be responsible for the safekeeping of all cash and securities in his custody. All payments from the fund shall be made by him on warrants issued by the Finance and Administration Cabinet. Payments may be in the form of checks, which shall clearly show on the envelope or other mailing device the name and address of the Kentucky Retirement Systems, or direct deposit bank transfers.

(2) The board shall appoint a custodian or custodians of the ***cash and*** securities acquired under authority of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852; and the custodian or custodians shall be responsible for the safekeeping of ***all cash and*** securities in his custody.

Section 26. KRS 61.665 is amended to read as follows:

(1) The board shall employ at least three (3) physicians, licensed in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person in connection with the payment of money to the person under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them. The board may employ one (1) or more licensed mental health professionals~~[as consultants to assist]~~ in making ***recommendations regarding***~~[determinations where there is objective medical evidence of]~~ mental impairments.

(2) (a) Each ***person***~~[employee]~~ requesting disability retirement shall file at the retirement office ***an application for disability retirement and supporting medical***~~[the names and addresses of all, but no fewer than two~~

~~(2), physicians who have the necessary]~~ information to report the ***person's***~~[employee's]~~ physical and mental condition. The ***person***~~[employee]~~ shall also file at the retirement office a complete description of the job and duties from which he received his last pay as well as evidence that the ***person***~~[employee]~~ has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630. ***The person shall certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners in accordance with paragraph (d) of this subsection. If, after good faith efforts, the person informs the system that he has been unable to obtain the employment or medical information, the system shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records.*** If ***the person***~~[an employee]~~ fails to file, at the retirement office within ***one hundred eighty (180) days***~~[six (6) months]~~ of the date the ***person***~~[employee]~~ filed his notification of retirement, any of the ***forms, certifications, or*** information required by this subsection, the ***person's***~~[employee's]~~ application for disability ***retirement***~~[benefits]~~ shall be void. ***Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in paragraph (f) of this subsection or subsection (2) of Section 15 of this Act.***

(b) The employer shall file at the retirement office a complete description of the job and duties for which the ***person***~~[employee]~~ was last paid and shall submit a detailed description of reasonable accommodations attempted.

(c)~~[The board shall prescribe forms upon which medical evidence shall be recorded. The forms shall be sent to the employee's physicians with the request that the documents be completed and filed at the retirement office.~~

~~(d)]~~ The cost of~~[a]~~ medical ***examinations and the filing of the medical information, reports, or data with the retirement office***~~[examination]~~ shall be paid by the ***person applying for disability retirement***~~[employee. The physicians shall be paid a reasonable amount by the retirement system for the filing of the medical report with the retirement office, pursuant to an administrative regulation promulgated by the board]~~.

(d)~~[(e)]~~ The system shall select ***three (3)***~~[a]~~ medical ***examiners***~~[examiner]~~ to evaluate the medical evidence submitted by the ***person***~~[employee's physician]~~. The ***medical examiners***~~[examiner]~~ shall recommend that disability retirement be approved, or that disability retirement be denied.~~[If the medical examiner recommends denial of disability benefits, the system shall submit the member's application to one (1) additional medical examiner. If the second medical examiner recommends approval, the application shall be submitted to a third medical examiner. Both of the additional medical examiners shall recommend approval of disability benefits to overturn the original recommendation.]~~ If there is~~[objective medical]~~ evidence of ***a*** mental ***impairment***~~[impairments]~~, the medical examiners may request the board's licensed mental health professional to assist in determining the level of the mental impairment.~~[Recommendations by the examiners shall be submitted to the board for approval.]~~

(e)~~[(f)]~~ If ***two (2) or more of*** the ***three (3)*** medical examiners recommend that the ***person***~~[employee]~~ be approved for disability retirement, the ***system***~~[executive director]~~ shall make retirement payments in accordance with the retirement plan selected by the ***person***~~[employee]~~.

(f)~~[(g)]~~ If ***two (2) or more of*** the ***three (3)*** medical examiners recommend that the ***person***~~[employee]~~ be denied disability retirement, the ***system***~~[executive director]~~ shall ***send notice of this recommendation by United States first class mail to the person's last address on file in the retirement office***~~[notify the employee of this recommendation]~~. The ***person***~~[employee]~~ shall have ***one hundred eighty (180)***~~[sixty (60)]~~ days ***from the day that the system mailed the notice*** to file at the retirement office additional ***supporting*** medical information ***and certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners*** or to appeal his denial ***of***~~[for]~~ disability ***retirement***~~[benefits]~~ by filing at the retirement office a request for a formal hearing. ***Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in subsection (2) of Section 15 of this Act***~~[An extension of time may be granted by the system for a medical examiner to evaluate additional medical information. The extensions of time shall not be for more than sixty (60) days for any one (1) extension, and no more than three (3) extensions shall be granted. The cumulative extension of time shall not exceed one hundred twenty (120) days. The extension of time shall end upon request of a formal hearing]~~.

(g) ***If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall make retirement payments in accordance with the retirement plan selected by the person.***

(h) ***If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall send notice of this recommendation by United States first class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the system mailed the notice to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing.***

(i) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.

(j)~~[(i)]~~ Notwithstanding the foregoing provisions of this section, the system may pay for one (1) or more medical examinations ***of the person*** requested by the ***medical*** examiners for the purpose of providing medical information deemed necessary by the ***medical*** examiners. The system may ***require the person to submit to one (1) or more medical examinations***~~[direct that a specialist be sought]~~.

(3) ~~[Any person aggrieved by a final order or determination of the system may file at the retirement office a request that a hearing be conducted by the system in accordance with KRS Chapter 13B. The right to demand a hearing shall be limited to a period of sixty (60) days after the requester has had notice, as described in subsection (6) of this section, of the system's determination. If any extensions of time are granted by the system, they shall be as provided for in subsection (2)(g) of this section.]~~

(a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection ***(2)(f) or (2)(h)***~~[(2)(g)]~~ of this section~~[or KRS 61.615(1)]~~ may file at the retirement office a request for ***a formal***~~[an administrative]~~ hearing ***to be conducted in accordance with KRS Chapter 13B***~~[with the system]~~. The right to demand a ***formal*** hearing shall be limited to a period of ***one hundred eighty (180)***~~[sixty (60)]~~ days after the ***person***~~[requester has]~~ had notice ***of the system's determination***, as described in subsection ***(2)(f) or (2)(h)***~~[(6)]~~ of this section~~[, of the system's determination]~~. The request ***for a formal hearing*** shall be filed with the executive director, at the ***retirement***~~[system's central]~~ office in Frankfort. The request for a ***formal*** hearing shall include a short and plain statement of the reasons the~~[reduction, discontinuance, or]~~ denial of disability ***retirement***~~[benefits]~~ is being contested.~~[The request shall not operate as a stay of any reduction, discontinuance, or denial of benefits.]~~

(b) Failure of the ***person***~~[member]~~ to request a formal hearing within the period of time specified shall preclude the ***person***~~[member]~~ from proceeding any further with ***the application for disability retirement***~~[his cause of action]~~, except as provided in KRS 61.600***(2)***~~[(1)(e)]~~. This paragraph shall not limit the ***person's***~~[member's]~~ right to appeal to a court.

(c) The system may require the ***person***~~[member]~~ requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the ***person***~~[member]~~ or his legal representative. The system shall be responsible for the cost of the examination.

(d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

(e)~~[A final order of the board which alters or amends the decision recommended pursuant to subsection (2)(g) of this section shall relate back and take effect on the date of the recommendation.~~

~~(f)]~~ All requests for a hearing pursuant to this section shall be made in writing.

(4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

(5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.

(6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.

(a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.

(b) The member shall perform all acts that are necessary to enroll in and satisfy the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

Section 27. KRS 61.675 is amended to read as follows:

(1) The employer shall prepare the records and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him of his duties and obligations in connection with the system as a condition of employment.

(2) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 16.505 to 16.652, 61.610 to 61.705, or 78.510 to 78.852. The system shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a department or county, as defined in KRS 78.510(3), having records in his possession or under his control, shall permit access to and examination of the records upon the request of the system.

(3) Any agency participating in the Kentucky Employees Retirement System which is not an integral part of the executive branch of state government shall forward the employer and employee contributions required under KRS 61.560 and 61.565 to the retirement office ***on or before***~~[within twenty (20) days of]~~ the tenth day of the month following the period being reported. If the agency fails to forward all contributions ***on or before the tenth day of the month following the period being reported***~~[within the twenty (20) days]~~, interest ***on the delinquent contributions*** at the actuarial rate adopted by the board compounded annually~~[on the delinquent contributions]~~, but not less than one ***thousand***~~[hundred]~~ dollars ***($1,000)***~~[($100)]~~, shall be added to the amount due the system.

Section 28. KRS 61.685 is amended to read as follows:

(1) Notwithstanding the provisions of KRS Chapter 413, upon discovery of any error ***or omission*** in system records, the system shall correct all records including, but not limited to, membership in the system, service credit, member and employer contributions, and benefits paid or payable. ***The system may conduct audits to detect possible fraud, misrepresentation, and change in circumstance, which may result in errors or omissions in the system's records. The system, by its executive director or by representatives appointed in writing by the executive director, may take testimony or depositions, and may examine records, documents, or files of any person whose records, documents, or files may furnish knowledge concerning any system records, when the executive director or representative deems this reasonably necessary for purposes incident to the performance of the system's functions. The system may enforce these powers by application to the Franklin Circuit Court, which court may compel compliance with the orders of the executive director or representatives appointed by the executive director.***

(2) Neither the board nor any of its individual members shall be liable to any person for any claim arising from the failure of any participating employer, or any employer who should have been participating in any retirement system operated by the board, to make retirement contributions on behalf of the person.

Section 29. KRS 61.701 is amended to read as follows:

(1) There is hereby created and established a~~[state]~~ fund to be known as "Kentucky Retirement Systems Insurance Fund." ***All assets received in the fund shall be deemed trust funds to be held and applied solely as provided in this section.***

(2) The fund is created pursuant to 26 U.S.C. sec. 106 for the purpose of providing a fund separate from the retirement funds and is to be used to provide fringe benefits as provided in KRS 61.702 to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries.

(3) The fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the board shall manage the assets of the fund in the same manner in which it administers the retirement funds.

Section 30. KRS 61.702 is amended to read as follows:

(1) (a) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, except as provided in subsection (8) of this section. The board shall also arrange to provide health care coverage by health maintenance organizations, as defined in KRS 18A.225, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage by a health maintenance organization shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of health maintenance organization coverage and the benefits to which he would be entitled under this section.

(b) The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status, except as provided in subsection (8) of this section. Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.

(c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.

(2) Each employer participating in the State Police Retirement System as provided for in KRS 16.510 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.

(3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:

1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;

2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance fund;

3. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance fund under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;

4. Partly from subparagraphs 1., 2., or 3., except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance fund or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance fund shall pay the balance, not to exceed the monthly contribution.

5. In full from the Kentucky Retirement Systems insurance fund for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but

have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance fund provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who becomes disabled in the line of duty as defined in KRS 16.505(19) or KRS 61.621, shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who is killed in the line of duty as defined in KRS 16.505(19) or KRS 61.621, shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service." ***For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System, "months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.***

(b) For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one of the other state-administered retirement plans.

1. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance fund, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance fund shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.

2. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.

3. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.

(4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, ***each dependent child***~~[dependents]~~, and ***each*** disabled ***child***~~[children]~~, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the ***hospital and medical insurance for the*** spouse, ***each*** dependent ***child***, ***and each*** disabled child, or beneficiary~~[hospital and medical insurance]~~ is paid by payroll deduction from the retirement allowance or by another method. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(b) The other provisions of this section notwithstanding, the insurance fund shall pay a percentage of the monthly contribution for the spouse and ***for each dependent child***~~[dependents]~~ of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of

the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System~~[, or the beneficiary of the member, if the member designated only one (1) person as beneficiary]~~. The percentage of the monthly contribution paid for the spouse and ***each dependent child*** ~~[dependents]~~ of a recipient who was in a hazardous position shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.

(c) The insurance fund shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance fund provides coverage for the spouse or ***each dependent child*** ~~[dependents or beneficiary]~~ of a former member of the County Employees Retirement System, the insurance fund shall continue the same level of coverage for the spouse or ***each*** dependent ***child*** ~~[or beneficiary]~~ after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent ***child*** ~~[or beneficiary]~~ is not eligible for Medicare coverage.

(5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.

(6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.

(7) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.

(8) For employees ***having a membership date*** ~~[hired]~~ on or after July 1, 2003, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems. An employee who earns at least one hundred twenty (120) months of service in the state-administered retirement systems shall be eligible for benefits determined using the formula in subsection (3) of this section for a recipient with one hundred twenty (120) or more months of service. The one hundred twenty (120) months of service requirement shall be waived for a member who is disabled or killed in the line of duty as defined in KRS 16.505(19) or KRS 61.621, and the member or his beneficiary shall be entitled to the benefits payable under subparagraph (3)(a)5. of this section. The benefits of this subsection as provided on July 1, 2003, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.

Section 31. KRS 78.510 is amended to read as follows:

As used in KRS 78.520 to 78.852, unless the context otherwise requires:

(1) "System" means the County Employees Retirement System;

(2) "Board" means the board of trustees of the system as provided in KRS 78.780;

(3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;

(5) "Examiner" means the medical examiners as provided in KRS 61.665;

(6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.520 to 78.852;

(7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;

(8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;

(9) "Service" means the total of current service and prior service as defined in this section;

(10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;

(11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;

(12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;

(13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the ***system in which it is recorded if it is equal to or greater than one thousand dollars ($1,000)*** ~~[employer]~~. If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or

after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4);

(14) "Final compensation" means:

(a) For a member who is employed in a nonhazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used; or

(b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance; or

(c) For a member who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

(17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;

(18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.520 to 78.852;

(19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

(20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.520 to 78.852;

(21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:

(a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;

(b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;

(c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or

(d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;

(22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);

(23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;

(24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

(25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;

(26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

(27) "Person" means a natural person;

(28) "School term or year" means the twelve (12) months from July 1 through the following June 30;

(29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

(30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

(31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615; and

(32) "Month" means a calendar month.

Section 32. KRS 78.520 is amended to read as follows:

There is hereby created and established:

(1) A retirement system for employees to be known as the "County Employees Retirement System" by and in which name it shall, pursuant to the provisions of KRS 78.510 to 78.852, transact all of its business and shall have the powers and privileges of a corporation; and

(2) A~~[state]~~ fund, called the "County Employees Retirement Fund," which shall consist of all the assets of the system as set forth in KRS 78.510 to 78.852. ***All assets received in the fund shall be deemed trust funds to be held and applied solely as provided in KRS 78.510 to KRS 78.852.***

Section 33. KRS 78.540 is amended to read as follows:

Membership in the system shall consist of the following:

(1) All persons who become employees of a participating county after the date the county first participates in the system, except a person who did not elect membership pursuant to KRS 61.545(3), and except that mayors and members of city legislative bodies may decline prior to their participation in the system and city managers or other appointed local government executives who participate in a retirement system, other than Social Security,~~[which operates in more than one (1) state,]~~ may decline prior to their participation in the system;

(2) (a) All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the county's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852;

(b) All persons who are employees of a county who did not elect to participate within thirty (30) days of the date the county first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the county's date of participation;

(3) All persons who declined participation in subsection (1) of this section and who later elect to participate. Persons who elect to participate under this subsection may purchase service credit for any prior years by paying a delayed contribution payment. The service shall not be included in the member's total service for purposes of determining benefits under KRS. 61.702; and

(4) All persons electing coverage in the system under KRS 78.530(3)(d).

(5) The provisions of subsections (1) and (2) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621, or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.

(6) Membership in the system shall not include those employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems, except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.

Section 34. KRS 78.625 is amended to read as follows:

(1) The agency reporting official of the county shall, by the tenth day of each month, forward to the system an amount equal to the aggregate amount of the employees' contributions deducted during the previous month in accordance with KRS 78.610 and the aggregate amount of the employer's contributions due for the previous month in accordance with KRS 61.565.

(2) The agency reporting official or some other person designated by the county shall forward a record of all contributions to the system on the forms the board prescribes.

(3) (a) If the agency reporting official fails to forward all contributions ***on or before***~~[by]~~ the ***tenth***~~[twentieth]~~ day of the month following the period being reported, interest ***on the delinquent contributions*** at the actuarial rate adopted by the board compounded annually~~[on the delinquent contributions]~~, but not less than one ***thousand***~~[hundred]~~ dollars ***($1,000)***~~[($100)]~~, shall be added to the amount due the system.

(b) Delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties may be recovered by action in the Franklin Circuit Court against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.

(4) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions***, with interest at the rate adopted by the board compounded annually, or penalties*** have been ***paid to the system***~~[made]~~.

Section 35. KRS 78.790 is amended to read as follows:

(1) The board shall be the trustee of the several funds created by KRS 78.510 to 78.852, and shall have full power to invest and reinvest such funds subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state except that the board may, at its discretion, purchase common stocks in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

(2) All~~[registered]~~ securities acquired under the authority of KRS 78.510 to 78.852 shall be registered in the name Kentucky Retirement Systems or nominee name as provided by KRS 287.225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and executive director of the systems.

(3) The board, in keeping with its responsibility as the trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.

Section 36. The following KRS sections are repealed:

16.537 Service credit for other public employment by delayed contribution payment -- Recalculation of benefits for retirees.

16.596 Medical examinations after disability retirement.

61.558 Service credit for other public employment by delayed contribution payment -- Recalculation of benefits for retirees.

78.605 Service credit for other public employment by delayed contribution payment -- Recalculation of benefits for retirees.

Approved April 2, 2004

CHAPTER 37

(SB 37)

AN ACT relating to mines and minerals.

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

Section 1. KRS 352.010 is amended to read as follows:

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

(a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;

(b) "Active workings" means all places in a mine that are ventilated and inspected regularly;

(c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department of Mines and Minerals;

(d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;

(e) "Board" means the Mining Board created in KRS 351.105;

(f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;

(g) "Commissioner" means commissioner of the Department of Mines and Minerals;

(h) "Department" means the Department of Mines and Minerals;

(i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;

(j) "Excavations and workings" means the excavated portions of a mine;

(k) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated inby the last open crosscut in any entry or room;

(l) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;

(m) "Gassy mine." All underground mines shall be classified as gassy or gaseous;

(n) "High voltage" means any voltage of one thousand (1,000) volts or more;

(o) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated;

(p) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;

(q) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;

(r) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;

(s) "Low voltage" means up to and including six hundred sixty (660) volts;

(t) "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;

(u) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;

(v) "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of persons employed therein;

(w) "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;

(x) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;

(y) "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;

(z) "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any on-coming shift;

(aa) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;

(ab) "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;

(ac) "Slope" means an inclined opening used for the same purpose as a shaft;

(ad) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;

(ae) "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;

(af) "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;

(ag) "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;

(ah) "Working place" means the area of a coal mine inby the last open crosscut; ~~[and]~~

(ai) "Working section" means all areas of a coal mine from the loading point to and including the working faces***;***

(aj) "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.

(2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.

(3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 ***and shall not apply to electrical facilities owned, operated or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property***.

Section 2. KRS 352.220 is amended to read as follows:

For purposes of this section, "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the Commissioner of the Department of Mines and Minerals or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "Suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

(1) The following shall apply to underground installations:

(a) ***Nonconductive or insulated materials shall be used when trailing cables or high voltage feeder cables are suspended***~~[On all haulage roads, landings, and partings where men are required to regularly work or pass under bare power wires placed less than six and one half (6 1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;~~

~~(b) All machine feed wires shall be placed on insulators which shall be so placed as to prevent the wires coming in contact with the coal;~~

~~(c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected from the persons coming in contact therewith, as provided in paragraph (a) of this subsection]~~;

(b)~~[(d)]~~ ***Suitable circuit interrupting devices***~~[All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but~~

~~wires, when protected as provided for in paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers]~~ shall be provided ***for all power circuits and equipment***~~[to control the current]~~ at the mine~~[and all important sections in the mine]~~;

(c)~~[(e)]~~ All power wires and cables~~[in hoisting shafts or manway compartments]~~ shall be properly insulated~~[, substantially fixed,]~~ and~~[well]~~ protected ***by proper installation or guarding***;

(d)~~[(f)]~~ Ground wires for~~[low-voltage]~~ circuits shall ***have a total cross-sectional area of not less than one-half (1/2) the power conductor***~~[be at least one-half (1/2) as large as the circuit wires]~~;

(e)~~[(g)]~~ Extra length or long trailing cables shall be spread out in long open loops ***or in a figure-eight configuration*** on ***a*** clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables~~[in]~~ suspended ***in*** long ***open*** loops shall be acceptable;

(f)~~[(h)]~~ One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment.~~[Temporary]~~ Splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. ***Splices made in cables shall provide continuity of all components***~~[Trailing cables or hand cables which have exposed wires or which have splices that heat and spark under load shall not be used]~~;

(g)~~[(i) Single conductor trailing cables shall not be used on cutting machines;~~

~~(j)]~~ Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;

(h)~~[(k)]~~ The frames of hand-held electrically driven tools~~[and portable sump pumps]~~ shall be properly grounded ***or double-insulated by design.***~~[, and]~~ The ***frames of all pumps shall be properly grounded.*** Hand-held tools and ***all***~~[portable]~~ pumps shall be properly protected by ***suitable*** fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;

~~[(l) All pump frames and all pipe lines shall be grounded to the rail or the grounding system at two hundred (200) foot intervals, except nonmetallic pipes or pipes using insulated type couplings or pipes installed remotely from track or power systems;~~

~~(m) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross bonds shall be installed not to exceed two hundred (200) foot intervals along the track;]~~

(i)~~[(n)]~~ All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work ***under*** or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with~~[trolley wires and]~~ other~~[low-voltage]~~ circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal ***conductor not smaller than No. 10 (AWG)*** or ***an insulated*** external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit***. All cables shall be suitable for the current and voltage and shall be properly maintained***;

(j)~~[(o)]~~ ***Power circuits***~~[High voltage cables]~~ shall have ***suitable*** disconnecting ***devices and short-circuit***~~[switches, overload]~~ protective devices~~[, and lightning arresters]~~ at or near the ***supply***~~[outside]~~ end of the ***circuit. Suitable disconnecting devices shall be provided at the beginning of all branch circuits***~~[cable]~~;

(k) ~~[(p)]~~ ***Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a suitable fire suppression system.***

1. When a noncombustible structure or area is used, these installations shall be:

a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system (AMS) installed and operated in a suitable manner. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or

c. Ventilated with intake air and equipped with sensors to monitor for heat, carbon monoxide, or smoke.

2. The sensored used for monitoring shall de-energize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when any of the following occurs:

a. The temperature in noncombustible structure reaches one hundred sixty-five (165) degrees Fahrenheit;

b. The carbon monoxide concentration reaches ten (10) parts per million above the ambient level for the area; or

c. The optical density of smoke reaches 0.022 per meter.

3. At least every thirty (30) days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.

4. When a fire suppression system is used, the installation shall be:

a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system installed and operated in a suitable manner.

5. All monitoring systems used to monitor intake air ventilating battery charging stations under subparagraphs 1. and 4. of this paragraph shall be done with sensors not affected by hydrogen.

6. This paragraph shall not apply to:

a. Rectifiers and power centers with transformers that either are dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;

b. Submersible pumps;

c. Permissible pumps, and associated permissible switchgear;

d. Pumps located on or near the section that are moved as the working section advances or retreats; or

e. Small portable pumps ~~[Permanent battery charging stations, permanent pump installations, motor generator sets, rotary converters, and oil filled transformers and switches used underground shall be housed in fireproof enclosures ventilated by a separate split of air direct to the main return]~~. Underground stations containing transformers or circuit breakers filled with ***flammable*** ~~[inflammable]~~ oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture ***occurs*** ~~[occur]~~, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with ***nonflammable*** ~~[noninflammable]~~ liquid or inert gas. ~~[Sectional type]~~Portable power centers, portable transformers, and distribution centers which are

essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places ***outby the***~~[out by]~~ last open crosscuts;

(l)~~[(q)]~~ ***Electrically powered***~~[All mine]~~ locomotives shall be ***provided with suitable electrical protective devices***~~[fused or otherwise protected at the switch or at the nip]~~;

(m)~~[(r)]~~ Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with ***start and stop*** controls at ***intervals not to exceed one thousand (1000) feet. The controls shall be properly installed and positioned so as to be readily accessible***~~[locations recommended by the mine inspector. This does not prevent the use of belting which is being used on June 16, 1972, but the use of rubber belting shall be under such conditions as may be prescribed by the commissioner]~~;

(n)~~[(s)]~~ ***Communication wires and cables***~~[Telephone lines]~~ shall be ***adequately insulated and protected by proper installation or guarding***~~[provided with lightning arresters where the lines enter the mine and at the boxes on the outside]~~;

(o)~~[(t)]~~ Telephone~~[lines crossing trolley]~~ wires shall be ***provided with lightening arresters where the wires enter the mine and at the buildings on the surface***~~[carefully guarded in a nonconductive conduit]~~;

(p)~~[(u)]~~ Insulating mats shall be placed in front of ***disconnecting devices***~~[switchboards, beside stationary motors, in decks of locomotives,]~~ and all electrical installations where required;

(q)~~[(v)]~~ Ground wires in trailing cables shall be tested ***weekly***~~[periodically]~~ for open circuit and high resistance~~[joints]~~;

(r)~~[(w)]~~ Power circuits in tipples, buildings, cleaning plants, etc., and all ***underground***~~[inside]~~ electrical circuits shall be deenergized when not in use over a long period;~~[and]~~

(s)~~[(x)]~~ ***All underground power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by the persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustment;***

(t) Where electric circuits cross over or pass under belt conveyors the wiring shall be ***suitable*** protected***; and***

(u) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust~~[by conduit]~~.

(2) The following shall apply to ***trolley wires and trolley feeder wires:***

(a) On all haulage roads, landings, and partings where persons are required to regularly work or pass under bare power wires placed less than six and one-half (6 1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;

(b) All machine feed conductors shall be placed on suitable insulators which shall be so placed as to prevent the conductors coming in contact with combustible or conductive materials;

(c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected against persons coming in contact therewith, as required by paragraph (a) of this subsection;

(d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as required by paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;

(e) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track; and

(f) All mine locomotives shall be fused or otherwise protected at the switch or at the nip.

(3) The following shall apply to surface installations:

(a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;

(b) ***Electrical*** ~~[Protective barriers shall be so constructed between high voltage wires and telephone wires, trolley circuits, and any other similar conveyor wires or circuits as to prevent their failure by the falling of the high tension lines across the other circuits, wires, or conveyors;~~

~~(c) On four (4) wire circuits, the fourth or neutral wire terminating at transformers, or elsewhere, shall be of substantial construction to minimize any possibility of the wire being severed or damaged mechanically;~~

~~(d) On low voltage]~~ circuits, wires ***and cables*** shall be supported on insulators except when cables~~[made for use without insulators]~~, which are of a design that can be safely used without insulators, are used;

(c) ~~[(e)]~~ Lightning arresters shall be installed on all ***ungrounded, exposed power conductors and telephone wires*** ~~[circuits]~~ entering a mine, regardless of voltage. Overload protection and disconnect switches of ***suitable*** sizes and ratings approved by the department shall also be provided ***except that they shall not be required of telephone wires***;

(d) ~~[(f)]~~ Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;

(e) ~~[(g)]~~ All transformer tanks shall be effectively grounded;

(f) ~~[(h)]~~ Switch boxes, contactors, controllers, and all other similar devices shall be kept free of ***significant*** ~~[dust]~~ accumulations ***of combustible dust that create a fire hazard***; and

(g) ~~[(i)]~~ Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height ***; and***

(h) All surface power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. When disconnects for stationary low and medium voltage equipment that do not provide visual evidence that the power is disconnected are used, an adequately rated voltage detector shall be used to test each phase conductor or circuit part to verify they are de-energized before any work is performed. When practical, confirmation that the voltage detector is operating satisfactorily shall be made before each test.

(4) ~~[(3)]~~ (a) Notwithstanding any provisions of subsections (1)***,*** ~~[or]~~ (2)***, or (3)*** of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1)***,*** ~~[or]~~ (2)***, or (3)*** of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1)***,*** ~~[or]~~ (2)***, or (3)*** of this section; and

(b) The department may prescribe administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.

Section 3. KRS 352.230 is amended to read as follows:

For purposes of this section: "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the Commissioner of the Department of Mines and Minerals or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "Suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

(1) All electrical equipment ***and all other electric driven equipment except intrinsically safe equipment which is taken into or used inby the last open crosscut and in return airways***~~[purchased for face use]~~ in underground mines shall be~~[of the]~~ permissible~~[type]~~. The commissioner or his authorized representative shall reject any modification to mining equipment which would endanger the health or safety of employees.

(2)~~[No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person, capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas before they are permitted to have charge of electric face equipment and shall have a minimum of forty five (45) days of actual mining experience. Safety committeemen, shotfirers, and others whose duty may require them to make examination for gas shall undergo and pass an examination or possess a mine foreman's certificate before using a flame safety lamp underground. The examination shall be given by the mine inspector, blank forms therefor to be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.~~

~~(3) No electric face equipment shall be brought inby the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using a flame safety lamp or other approved device or instrument in the place where the equipment is to work, unless the examination is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas is found in the place, the electric equipment shall not be taken in until the gas is removed.~~

~~(4) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If gas is found in excess of one percent (1%), the power shall be disconnected from the equipment and left disconnected until the gas is removed and the place reported safe by a certified official.~~

~~(5)]~~ Headlights shall be ***properly*** installed and maintained in a ***workmanlike manner***~~[permissible]~~ and working order on all mobile and face equipment at all times the equipment is in operation.

(3)~~[(6)]~~ Headlights shall be mounted to provide maximum illumination where it will be most effective and shall be protected from damage by guarding or locations.

(4)~~[(7)]~~ At all times when mining equipment is being used, it shall be maintained in safe working order. ***Electrical equipment and circuits shall be examined and tested in a suitable manner by certified electricians to ensure safe working order.***

(5) Combustible materials, grease, lubricants, or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.

(6) All electrical equipment utilized in intake airways outby the last open crosscut shall be maintained in safe operating condition and in accordance with the manufacturer's instructions.

SECTION 4. A NEW SECTION OF KRS CHAPTER 352 IS CREATED TO READ AS FOLLOWS:

For purposes of this section, "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the Commissioner of the Department of Mines and Minerals or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "Suitable" means a design, material, or installation that meets the requirements of its

intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

(1) No person shall be placed in charge of electrical face equipment in any mine unless he is a qualified person capable of determining the safety of the roof, face, and ribs of the working places and detecting the presence of explosive gas. Operators of electrical face equipment shall undergo an examination to determine their fitness to detect explosive gas and shall have a minimum of forty-five (45) days of actual mining experience before they are permitted to have charge of electric face equipment. Safety committeemen, shotfirers, and others whose duty may require them to make inspections for gas shall undergo and pass an examination or possess a mine foreman's certificate before using an approved multi-gas detection device underground. The examination shall be given by the mine inspector. Blank forms for the examination shall be furnished by the department. A copy shall be retained on file at the mine office and the original shall be sent to the department fully made out and signed by the applicant and approved by the mine inspector.

(2) No electric face equipment shall be brought inby the last breakthrough next to the working face until the equipment operator has made an inspection for explosive gas using an approved gas detection device or instrument in the place where the equipment is to work unless the inspection is then made by some other competent person authorized and appointed for that purpose by the mine foreman. If any explosive gas in excess of one percent (1%) is found in the place, the electrical equipment shall not be taken in until the gas is removed.

(3) While the electric equipment is operating at the face, an examination for gas shall be made at not more than twenty (20) minute intervals. If methane gas is found in excess of one percent (1%) at any time, the power shall be de-energized from the equipment and left de-energized until the gas is reduced to less than one percent (1%) and the place determined safe by a foreman.

Approved April 2, 2004

CHAPTER 38

(SB 47)

AN ACT relating to engineers and professional land surveyors.

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

Section 1. KRS 329A.070 is amended to read as follows:

The provisions of KRS 329A.010 to 329A.090 do not apply to:

(1) An officer or employee of the United States, this state, another state, or any political subdivision thereof, performing his or her official duties within the course and scope of his or her employment;

(2) A public accountant, certified public accountant, or the bona fide employee of either, performing duties within the scope of public accountancy;

(3) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons;

(4) An attorney-at-law, or an attorney's bona fide employee, performing duties within the scope of the practice of law;

(5) An insurance company, licensed insurance agent, or staff or independent adjuster if authorized to do business in Kentucky, performing investigative duties limited to matters strictly pertaining to an insurance transaction;

(6) A person engaged in compiling genealogical information, or otherwise tracing lineage or ancestry, by primarily utilizing public records and historical information or databases;

(7) A private business employee conducting investigations relating to the company entity by which he or she is employed;

(8) An individual obtaining information or conducting investigations on his or her own behalf;~~[or]~~

(9) An employee of a private investigator or a private investigating firm who works under the direction of the private investigator or the private investigating firm for less than three hundred fifty (350) hours per year***; or***

(10) A professional engineer, a professional land surveyor, or a professional engineer's or professional land surveyor's bona fide employee, performing duties within the scope of practice of engineering or land surveying.

Approved April 2, 2004

CHAPTER 39

(SB 92)

AN ACT relating to the board of trustees for the University of Kentucky.

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

Section 1. KRS 164.170 is amended to read as follows:

(1) The board of trustees of the university shall meet ***quarterly***~~[on Tuesday preceding the regular annual commencement of the university, on the third Tuesday in September, on the second Tuesday in December, and on the first Tuesday in April of each year]~~. Special meetings may be called by the chairperson or by any three (3) members upon giving ten (10) days' written notice to each member of the board of trustees. The business to be transacted at special meetings shall be specified in the notice of the meeting. All meetings shall be held on the campus of the university unless otherwise specified by a majority vote of the board of trustees. A majority of the voting members of the board of trustees shall constitute a quorum. All necessary expenses incurred by the trustees in going to, returning from and while attending meetings of the board of trustees shall be paid out of the funds of the university, except a member who resides outside the Commonwealth shall not be reimbursed for out-of-state travel.

(2) The meetings of the board of trustees shall be open to the public. The board of trustees shall cause a stenographic transcript of each of its meetings to be prepared and filed. An agenda for each of the meetings shall be sent to each member of the board of trustees and a copy made available to the press.

Approved April 2, 2004

CHAPTER 40

(SB 122)

AN ACT relating to plumbing.

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

Section 1. KRS 318.030 is amended to read as follows:

(1) No person shall engage in plumbing or engage in or work at the trade of plumbing:

(a)~~[(1)]~~ Unless he is the holder of a valid and effective ***active*** master plumber's license duly issued by the department in accordance with the provisions of this chapter; or

(b)~~[(2)]~~ Unless he is the holder of a valid and effective journeyman plumber's license duly issued by the department in accordance with the provisions of this chapter.

(2) (a) No person, firm, or corporation shall engage in plumbing or engage in or work at the trade of plumbing unless the person, firm, or corporation maintains general liability insurance in an amount not less than two hundred fifty thousand dollars ($250,000) and submits proof of compliance with workers' compensation and unemployment insurance laws of the Commonwealth.

(b) Proof of insurance required in this subsection shall be submitted to the department prior to issuance or renewal of the active master plumber license required under this chapter.

(c) No license shall be valid without insurance as required in this subsection, and insurance carriers shall notify the department upon cancellation of the insurance of any licensee required to maintain insurance.

(d) The insurance required in this subsection shall not apply to an employee of a person, firm, or corporation engaged in plumbing as defined in this chapter.

Approved April 2, 2004

CHAPTER 41

(SB 146)

AN ACT relating to agriculture.

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

Section 1. KRS 41.600 is amended to read as follows:

As used in KRS 41.600 to 41.625, unless the context requires otherwise:

(1) "Eligible small business" means any person that has all of the following characteristics:

(a) Is headquartered in this state;

(b) Maintains offices and operating facilities in this state and transacts business in this state;

(c) Employs fewer than the equivalent of fifty (50) full-time employees, the majority of whom are residents of Kentucky;

(d) Has gross earnings that do not exceed one million dollars ($1,000,000) annually;

(e) Is organized for profit; and

(f) Holds no position as officer or director of an eligible lending institution.

(2) "Eligible agribusiness" means any person that has all of the following characteristics:

(a) Is actively engaged in agricultural endeavors within the Commonwealth of Kentucky;

(b) Shows gross earnings not in excess of one million dollars ($1,000,000) annually;

(c) Derives at least one-half (1/2) of annual gross income from farming; and

(d) Holds no position as officer or director of an eligible lending institution.

(3) "Eligible lending institution" means a financial institution that is eligible to make commercial loans including an institution of the farm credit system organized under the Farm Credit Act of 1971, 12 U.S.C. sec. 2001 et seq., as amended, which chooses to participate in the linked deposit investment program, and which agrees to lend the value of the deposits to small businesses or agribusinesses at a reduced interest rate according to the provisions of KRS 41.610.

(4) "Linked deposit investment" means a certificate of deposit, collateralized or uncollateralized, or a repurchase agreement placed by the State Investment Commission with an eligible lending institution at the rate designated according to the provisions of KRS 41.610 and where the maturity shall match the terms of the loan as approved by the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ or the Cabinet for Economic Development.

Section 2. KRS 41.606 is amended to read as follows:

(1) The State Investment Commission may invest in linked deposits as provided for in KRS 42.510. Investment moneys shall be derived from the state's unclaimed and abandoned property program set forth in KRS Chapter 393.

(2) Investment moneys shall be in low interest loans for agricultural production or for small business expansion or development.

(3) There is hereby created a "linked deposit investment program" in the ***Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~ whose purpose is to monitor link deposit loans for eligible agribusinesses through approved state financial institutions in accordance with administrative regulations promulgated pursuant to subsection (7) of this section.

(4) There is hereby created a "linked deposit investment program" in the Cabinet for Economic Development whose purpose is to monitor link deposit loans for eligible small businesses through approved state financial institutions in accordance with administrative regulations promulgated pursuant to subsection (7) of this section.

(5) The State Investment Commission may accept or reject a linked investment, or any portion thereof, with the eligible lending institution. If it is determined by the ***Kentucky Agricultural Finance Corporation*** ~~[Department of Agriculture]~~ or the Cabinet for Economic Development that the lending institution has violated standards of the linked deposit investment program, the commission shall reject the linked investment.

(6) The State Investment Commission, the ***Kentucky Agricultural Finance Corporation*** ~~[Department of Agriculture]~~, and the Cabinet for Economic Development, shall annually, by October 1 for the preceding state fiscal year, make a report on the Linked Deposit Investment Program to the Governor and to the leadership of the General Assembly who shall, in turn, transmit it to the appropriate legislative committees for consideration. The report shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based, and the eligible small businesses and agribusinesses who received the loans. In order to comply with these provisions, participating institutions shall supply information as required by administrative regulation.

(7) The ***Kentucky Agricultural Finance Corporation*** ~~[Department of Agriculture]~~ and the Cabinet for Economic Development, in consultation with the State Investment Commission, shall promulgate administrative regulations pursuant to KRS Chapter 13A setting forth the conditions for which small businesses and agribusinesses are eligible for loans made available through the Linked Deposit Investment Program.

Section 3. KRS 41.610 is amended to read as follows:

(1) Qualified public depositories in Kentucky shall be eligible to participate in the Linked Deposit Investment Program.

(2) An eligible lending institution choosing to participate in the Linked Deposit Investment Program shall enter into a linked deposit investment agreement with the State Investment Commission which shall include requirements necessary to carry out the purposes of the Linked Deposit Investment Program. A linked investment shall bear a minimum rate of two percent (2%) and a maximum rate fixed by the Wall Street Journal prime rate as published on the first business day of each month less four percent (4%).

(3) The eligible lending institution that desires to receive a linked deposit investment shall agree to loan the funds to borrowers under the following terms:

(a) No loan shall exceed one hundred thousand dollars ($100,000);

(b) Maturity dates of the loan shall be set as agreed to between the financial institution and the borrower with a maximum maturity of seven (7) years; and

(c) The rate of interest for the term of the loan shall be fixed at the Wall Street Journal prime rate as published on the first business day of each month, with a minimum interest rate of five percent (5%).

(4) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses and agribusinesses. The lending institution shall assume all responsibility for credit underwriting and shall apply all usual lending standards to determine the creditworthiness of each applicant.

(5) The eligible lending institution shall forward to the ***Kentucky Agricultural Finance Corporation*** ~~[Department of Agriculture]~~ or the Cabinet for Economic Development, as appropriate, a completed loan package for review to determine if the loan package is in accordance with the administrative regulations promulgated pursuant to KRS 41.606(7). If the loan package is found to be complete and in accordance with the administrative regulations, it shall be forwarded to the State Investment Commission for funding.

(6) The eligible lending institution shall charge no penalty for early payback of the linked deposit loan. Principal repayments received by the lending institution shall be returned to the State Investment Commission annually on the anniversary date of the loan.

(7) Applications for renewal of repurchase agreements shall be accompanied by a status report on linked deposit loans.

(8) The Commonwealth, ***the Kentucky Agricultural Finance Corporation***~~[Department of Agriculture]~~, and the Cabinet for Economic Development, their agents and employees, and the State Investment Commission shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business or to an eligible small agribusiness. Any delay in payments or default on the part of a borrower shall not affect the deposit agreement between the eligible lending institution and the State.

Section 4. KRS 247.942 is amended to read as follows:

As used in KRS 247.940 to 247.978, the following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Agricultural loan" means a loan made by a lending institution to any person for the purpose of financing agricultural diversification***, woodland product production,*** and alternative crop production; land acquisition or improvement; soil conservation; irrigation; construction; renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution, or export of agricultural products;

(2) "Applicant" means any person~~[, partnership, corporation, or any entity]~~ engaged in ***or proposing to be engaged in*** an agricultural endeavor or an agriculturally related business ***in Kentucky***~~[. To be considered an "applicant" under this definition, it is necessary that either:~~

~~(a) The prospective applicant be a "first-time farmer" as defined by the federal government who derives at least one-half (1/2) of his annual gross income from said endeavor or business, for three (3) years after the loan is approved. Furthermore, under this definition the prospective applicant shall not derive more than one hundred thousand dollars ($100,000) annual net income from all sources during the fiscal year preceding the year in which the loan application is made; or~~

~~(b) The prospective applicant be a Kentucky citizen currently engaged in an agricultural endeavor; derive at least three-fourths (3/4) of his annual gross income from farming or other agricultural endeavors; and shall not derive more than fifty thousand dollars ($50,000) annual net income from all sources, including spousal income, in the tax year preceding application]~~;

(3) "Board" means the board of directors of the corporation;

(4) "Bond resolution" or "resolution" means the formal document of the corporation authorizing its obligations;

(5) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation under KRS 247.940 to 247.978;

(6) "Commissioner" means the Commissioner of Agriculture;

(7) "Commonwealth" means the Commonwealth of Kentucky;

(8) "Corporation" means the Kentucky Agricultural Finance Corporation created by KRS 247.944;

(9)~~["Department" means the Department of Agriculture;~~

~~(10)]~~ "Governmental agency" means any city, county, or other political subdivision of the Commonwealth and any department, division, or public agency thereof, the federal government or any political subdivision of any other state and any nonprofit corporation or other entity legally empowered to act on behalf of any of the foregoing in the area of assistance to agriculture;

(10)~~[(11)]~~ "Issuing agency capacity" means the action of the corporation in authorizing revenue bonds for a qualified project in accordance with the provisions of KRS 103.210 to 103.285 in which the corporation's liability is limited primarily to fiduciary duties;

(11)~~[(12)]~~ "Lending agency capacity" means the action of the corporation in participating directly or indirectly in the making of loans to or the purchasing of loans of qualified applicants;

(12)~~[(13)]~~ "Lending institution" means any bank, bank or trust company, or institutions of the farm credit system organized under the Farm Credit Act of 1971, 12 U.S.C. secs. 2001 et seq., as amended, building and loan association, homestead, insurance company, investment banker, mortgage banker or company, pension or retirement fund, savings bank or savings and loan association, small business investment company, credit union, the federal government, or any other financial institution authorized to do business in the

Commonwealth of Kentucky or operating under the supervision of any federal agency or any corporation organized or operating pursuant to Section 25 of the Federal Reserve Act.

(13) ~~[(14)]~~ "Obligations" means any bonds or notes authorized to be issued by the corporation under the provisions of KRS 247.940 to 247.978;

(14) ~~[(15)]~~ "Project" means any undertaking to provide for the financing of the acquisition, construction, renovation, or improvement of land, buildings, machinery, equipment, and livestock in the area of agricultural enterprise; including ***but not limited to agricultural endeavors such as*** growing, storing, processing, warehousing, marketing, and distribution facilities in respect thereof or to provide for refinancing existing agricultural facilities;

(15) ~~[(16)]~~ "Trust agreement" means an indenture by and between the corporation and the corporate trustee setting forth the rights and duties of each relating to the authorization, sale, issuance, delivery, and payment of the corporation's obligations; and

(16) ~~[(17)]~~ "Umbrella obligation" means bonds or notes issued by the corporation in its issuing agency capacity or its lending agency capacity under the provisions of KRS 247.940 to 247.978, the proceeds of which may be used in the financing of multiple projects for two (2) or more applicants.

Section 5. KRS 247.944 is amended to read as follows:

(1) There is hereby created and established the Kentucky Agricultural Finance Corporation which shall be attached to the ***Office of the Governor*** ~~[Department of Agriculture]~~ for administrative purposes only.

(2) The corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people through the promotion of agriculture through the Commonwealth.

(3) The corporation shall be governed by a board of directors consisting of twelve (12) members***, ten (10) of whom shall be*** appointed by the Governor***. The other two (2) members shall be the Commissioner of the Department of Agriculture, who shall serve as chairperson, and the secretary of the Finance and Administration Cabinet. The commissioner may designate a representative to serve as chairperson in the commissioner's absence*** ~~[, three (3) of whom may be ex officio members of the board as follows:~~

~~(a) The Commissioner or his designee;~~

~~(b) The secretary, Finance and Administration Cabinet, or his designee; and~~

~~(c) The Lieutenant Governor or his designee]~~.

(4) The Governor ***shall*** ~~[may]~~ appoint ***ten (10)*** ~~[eight (8)]~~ private members of the board to take office and to exercise all powers ***of the board*** ~~[thereof]~~ immediately. ***The ten (10)*** ~~[Of the eight (8)]~~ directors of the corporation ***shall be appointed using staggered terms*** ~~[thus appointed, four (4) may continue in office for terms of one (1) year, two (2) for terms of two (2) years, one (1) for a term of three (3) years and one (1) for a term of four (4) years respectively, as the Governor may designate; at the expiration of said original terms and for all succeeding terms, the Governor may appoint a successor to the board for a term of four (4) years in each case]~~. Of the ***ten (10)*** ~~[initial eight (8)]~~ private members of the board appointed by the Governor, ***two (2)*** ~~[one (1)]~~ may be ***officers*** ~~[an officer]~~ from a commercial lending institution, one (1) may be an officer from a farm credit association, one (1) may be an agricultural economist, one (1) ***shall*** ~~[may]~~ be a tobacco farmer, one (1) ***shall*** ~~[may]~~ be a cash grain farmer, one (1) ***shall*** ~~[may]~~ be a livestock farmer, one (1) ***shall*** ~~[may]~~ be a dairy farmer, ***one (1) shall be a horticultural farmer,*** and one (1) ***shall*** ~~[may]~~ be from the equine industry. ~~[After July 13, 1990, the Governor may appoint a horticultural farmer as an additional private member of the board for an initial four (4) year term.]~~ ***To promote efficient use of agricultural resources and coordination among agricultural leaders, the Governor shall appoint a member from the Agricultural Development Board, who meets the qualifications for one (1) of the positions set out in this subsection, to one (1) of the ten (10) board positions governing the Kentucky Agricultural Finance Corporation.***

(5) Upon the expiration of the initial terms of the private members of the board, the Governor ***shall*** ~~[may]~~ appoint successors representing the same constituencies as the members succeeded for a term of four (4) years in each case. In the case of a vacancy, the Governor may appoint a successor to hold office during the remainder of the term.

(6) ***Staff services for the board shall be provided by the Office of the Governor. The executive director of the Agricultural Development Board shall serve as executive director for*** the board~~[of directors shall annually elect one (1) of its members as chairman and one (1) of its members as vice-chairman and shall also elect or appoint, and prescribe the duties of, such other officers as the board deems necessary or advisable, including, but not limited to, an executive director, secretary, and legal counsel, and shall fix the compensation therefor]~~.

(7) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board. The ***executive director***~~[secretary]~~ shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The ***executive director***~~[secretary]~~ shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that the copies are true copies, and all persons dealing with the corporation may rely on such certifications.

(8) A majority of the board shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies; provided, however, that a majority of the board may elect from among its members an executive committee to act in its stead in the day to day conduct of the business of the corporation. Notwithstanding the foregoing, the full board shall hold at least one (1) meeting each calendar quarter in accordance with a schedule to be established by the board.

(9) Action may be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum exists called upon three (3) days written notice or upon the concurrence of at least seven (7) directors or by the board's executive committee.

(10) All members of the board shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties.~~[Each appointed member of the board shall be entitled to a fee of fifty dollars ($50) for attendance at each meeting of the board or executive committee.]~~

Section 6. KRS 247.978 is amended to read as follows:

The total amount of principal which a qualified applicant may owe to the corporation at any one (1) time shall not exceed:

(1) Two-hundred fifty thousand dollars ($250,000) for ***first time farmers as defined by the U.S. Department of Agriculture, Farm Service Agency***~~[applicants as defined in KRS 247.942(2)(a)]~~; or

(2) ***One million dollars ($1,000,000)***~~[Fifty thousand dollars ($50,000)]~~ for ***other*** applicants~~[as defined in KRS 247.942(2)(b)]~~.

Section 7. KRS 12.023 is amended to read as follows:

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

(1) Council on Postsecondary Education;

(2) Department of Military Affairs;

(3) Department for Local Government;

(4) Kentucky Commission on Human Rights;

(5) Kentucky Commission on Women;

(6) Kentucky Commission on Military Affairs;

(7) Kentucky Coal Council;

(8) Governor's Office of Child Abuse and Domestic Violence Services;

(9) Governor's Office for Technology;

(10) Office of Coal Marketing and Export;

(11) Agricultural Development Board;

(12) Commission on Small Business Advocacy;

(13) Office of Early Childhood Development;

(14) Kentucky Agency for Substance Abuse Policy;~~[and]~~

(15) Education Professional Standards Board***; and***

(16) Kentucky Agricultural Finance Corporation.

Approved April 2, 2004

CHAPTER 42

(SB 200)

AN ACT relating to tuition for postsecondary education.

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

Section 1. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

(1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;

(2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;

(3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

(4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;

(5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;

(6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;

(7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

(8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. ***In defining residency, the council shall classify a student as having Kentucky residency if the student met the residency requirements at the beginning of his or her last year in high school and enters a Kentucky postsecondary education institution within two (2) years of high school graduation.*** In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;

(9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including, but not limited to, appropriations to the Department for Adult Education and Literacy. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to

devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

(10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;

(11) (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

(b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;

(12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;

(13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;

(14) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;

(15) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;

(16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:

(a) Consistency with the institution’s mission and the strategic agenda;

(b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

(c) Elimination of unnecessary duplication of programs within and among institutions; and

(d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;

(17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;

(18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;

(19) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

(20) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;

(21) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;

(22) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;

(23) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

(24) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;

(25) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include but not be limited to the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;

(26) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;

(27) Select and appoint a president of the council under KRS 164.013;

(28) Employ consultants and other persons and employees as may be required for the council’s operations, functions, and responsibilities;

(29) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;

(30) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;

(31) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;

(32) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;

(33) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions and in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary

public institution or a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;

(34) Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Department for Adult Education and Literacy, under the provisions of KRS 164.0203 for raising the knowledge and skills of the state's adult population. The council shall:

(a) Promote coordination of programs and responsibilities linked to the issue of adult education with the Department for Adult Education and Literacy and with other agencies and institutions;

(b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;

(c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;

(d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and

(e) Administer the adult education and literacy initiative fund created under KRS 164.041; and

(35) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

Approved April 2, 2004

CHAPTER 43

(SB 203)

AN ACT relating to local industrial development authorities.

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

Section 1. KRS 154.50-326 is amended to read as follows:

(1) The members of the authority shall be appointed as follows:

(a) If the authority is established by a city, the members shall be appointed by the mayor of the city;

(b) If the authority is established by a county, the members shall be appointed by the county judge/executive;

(c) If the authority is established as a joint city-county industrial development authority, one-half (1/2) of the members shall be appointed by the mayor and one-half (1/2) of the members by the county judge/executive. If the authority is composed of seven (7) members, the mayor and the county judge/executive shall jointly appoint the seventh member;

(d) If a combination of cities and/or counties establishes a joint industrial development authority, ***or if an established joint industrial development authority is altered by adding a new city or county as a participating member,*** the mayors and/or county judges/executive involved shall***:***

1. Jointly choose the members, and shall jointly choose successors***; or***

2. Choose the members and successors in a manner established by an agreement entered into between the legislative bodies of the affected cities and counties.

(2) Members of the authority shall serve for a term of four (4) years each, and until their successors are appointed and qualified. If the authority is composed of six (6) members, initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years, and two (2) members for

four (4) years. If the authority is composed of seven (7) members, initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years, and three (3) members for four (4) years. If the authority is composed of eight (8) members, initial appointments shall be made so that two (2) members are appointed for two (2) years, three (3) members for three (3) years, and three (3) members for four (4) years. Upon expiration of these staggered terms, successors shall be appointed for a term of four (4) years.

(3) An industrial development authority member may be replaced by the appointing authority upon a showing to the appointing authority of misconduct as an authority member or upon conviction of a felony.

Approved April 2, 2004

CHAPTER 44

(SB 222)

AN ACT relating to environmental protection.

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

Section 1. KRS 224.46-580 is amended to read as follows:

(1) The General Assembly declares that it is the purpose of this section to promote the development of statewide programs, under the responsibility of a single agency, which are intended to protect the health of the citizens and the environment of the Commonwealth from present and future threats associated with the management of hazardous wastes and the release of toxic chemicals regulated under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, including disposal, treatment, recycling, storage, and transportation. The intent of the General Assembly is to add to and coordinate, and not replace, existing efforts and responsibilities in the areas of hazardous waste management, toxic chemical manufacture, processing, or other use, and to leave the primary burden and responsibility for hazardous waste and toxic chemical reduction on private industry; and further to finance assistance and coordination by imposing assessments on the generation of hazardous waste. The assessments are intended to produce a reduction in waste generated; to promote the use of new techniques in recycling, treatment, and alternatives other than land disposal; and to place the burden of financing additional hazardous waste management activities necessarily undertaken by state agencies on the users of those products associated with the generation of hazardous waste. The General Assembly further finds that Kentucky's industries need assistance in developing and implementing pollution prevention goals and that a fund should be established to provide technical and financial assistance to those industries.

(2) The Natural Resources and Environmental Protection Cabinet is given the authority to administer the provisions and programs of this section and the responsibility to achieve the purposes of this section.

(3) In addition to all specific responsibilities contained elsewhere in this chapter, the cabinet shall:

(a) Respond effectively and in a timely manner to emergencies created by the release of hazardous substances, as defined in KRS 224.01-400, into the environment. The cabinet shall provide for adequate containment and removal of the hazardous substances in order that the threat of a release or actual release of the substance may be abated and resultant harm to the environment minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by the cabinet if necessary to respond to an environmental emergency.

(b) Provide for post-closure monitoring and maintenance of hazardous waste disposal sites upon termination of post-closure monitoring and maintenance responsibilities by persons permitted to operate the facility pursuant to this chapter.

(c) Identify, investigate, classify, contain, or clean up any release, threatened release, or disposal of a hazardous substance where responsible parties are economically or otherwise unavailable to properly address the problem and the problem represents an imminent danger to the health of the citizens and the environment of the Commonwealth.

(4) The cabinet shall have the authority to finance the nonfederal share of the cost for clean up of sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. 96-510).

(5) The cabinet shall recover, when possible, actual and necessary expenditures incurred in carrying out the duties under this section. Any expenditures recovered shall be placed in the hazardous waste management fund.

(6) It is the expressed purpose of this section to accomplish effective hazardous waste and toxic chemical management that results in a reduction of the generation of hazardous wastes and the release of toxic chemicals within the Commonwealth; further, it is a purpose of this chapter to allocate a portion of the cost of administering necessary governmental programs related to hazardous waste and toxic chemical management to those industries whose products are reasonably related to the generation of hazardous waste.

(7) There is hereby imposed upon every person engaged within this state in the generation of hazardous waste an annual hazardous waste assessment to be determined pursuant to this section according to the quantity by weight of hazardous waste generated, except that no assessment shall be levied against generators for any quantity of "special wastes," waste oil, or spent material from air pollution control devices controlling emissions from coke manufacturing facilities. The assessment shall not be imposed upon any person for any quantities of hazardous waste generated by others for which that person is a secondary handler that stores, processes, or reclaims the waste. The assessment shall be reported and paid to the Natural Resources and Environmental Protection Cabinet for the generation of hazardous waste on an annual basis on January 1 of each year. The payment shall be accompanied by a report or return in a form that the cabinet may prescribe. If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this section and which levies an assessment or tax upon any business assessed pursuant to this section, the amount of the assessment to be levied upon the business under this section shall be reduced by the amount of the federal assessment or tax upon the business. The reduction shall only be authorized when funds raised by the federal assessment or tax are made available to the state for any of the activities to be funded under this section. If federal moneys are available to carry out the duties imposed by subsection (3) of this section, the assessment shall cease to be levied and collected until such time as federal moneys are no longer available to the Commonwealth for these purposes. The assessment shall be charged against generators of hazardous waste until June 30, ***2006*** ~~[2004]~~. After this date, no further hazardous waste management assessment shall be charged against generators.

(8) The assessment on generators shall be one and two-tenths cents ($0.012) per pound if the waste is liquid, or two-tenths of a cent ($0.002) per pound if the waste is solid.

(a) Hazardous waste that is injected into a permitted underground injection well shall be assessed on a dry weight basis;

(b) Hazardous waste treated, detoxified, solidified, neutralized, recycled, incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the appropriate rate, except for recycled waste used in the steel manufacturing process which shall be exempt;

(c) Waste that is subject to regulation under Section 402 or 307B of the Federal Clean Water Act shall be exempt; and

(d) Emission control dust and sludge from the primary production of steel that is recycled by high temperature metals recovery or managed by stabilization of metals shall be exempt.

(9) Except for waste brought into the state by a company to an affiliated manufacturing facility of the company receiving the waste, any person who transports hazardous waste into the state for land disposal or treatment which is generated outside of the state shall pay an assessment to the hazardous waste facility which first receives the waste for storage, treatment, or land disposal. The assessment rate shall be identical to the rate described in subsection (8) of this section. The facility shall remit the assessment to the cabinet on an annual basis on January 1 of each year. The payment shall be accompanied by a return the cabinet shall prescribe.

(10) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails or refuses to file a return or furnish any information requested in writing by the cabinet, the cabinet may, from any information in its possession, make an estimate and issue an assessment against the generator or hazardous waste facility and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.

(11) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the cabinet, unless it is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause, five percent (5%) of the assessment found to be due by the cabinet shall be added to the assessment for

each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment.

(12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the generator, or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the cabinet.

(13) There is hereby created within the State Treasury a trust and agency fund which shall not lapse to be known as the hazardous waste management fund. The fund shall be deposited in an interest-bearing account. The cabinet shall be responsible for collecting and receiving funds as provided in this section, and all such assessments collected or received by the State Treasury shall be deposited in the hazardous waste management fund. All interest earned on the money deposited in the fund shall be deposited to the fund. When the State Treasurer certifies to the cabinet that the uncommitted balance of the hazardous waste management fund exceeds six million dollars ($6,000,000), assessments shall not be collected until the State Treasurer certifies to the cabinet that the balance in the hazardous waste management fund is less than three million dollars ($3,000,000). The implementation of the cap on the fund shall be suspended from July 13, 1990, until July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall refund or grant a credit against the next assessment to come due, on a pro-rated basis, any money collected in one (1) year in excess of the cap.

(14) There is hereby created within the State Treasury a trust and agency account which shall not lapse to be known as the pollution prevention fund. The fund shall be placed in an interest-bearing account. The fund shall be administered by the Center for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty percent (20%) of the funds received by the hazardous waste management fund subject to the enacted budget bill. The cabinet shall provide to the center estimates of the amount of the hazardous waste assessment expected to be collected during each upcoming fiscal year.

(15) Upon request of the secretary, moneys accumulated in the hazardous waste management fund shall be released in amounts necessary to accomplish the performance of the duties imposed by subsection (3) of this section. However, moneys from the fund shall not be used when federal moneys are available to carry out these duties, except when immediate action is required to protect public health or the environment, in which case the cabinet shall actively pursue reimbursement of the fund by any available federal moneys.

(16) If any person responsible for a release or threatened release of a hazardous substance fails to take response actions or to make reasonable progress in completing response actions ordered by the cabinet, the cabinet may bring an action to compel performance or may take appropriate response actions and order the responsible person to reimburse the cabinet for the actual costs incurred by the cabinet.

(17) If disposal activities have occurred at a hazardous waste site, the cabinet shall record in the office of the county clerk in the county in which a waste site is situated a notice containing a legal description of the property that discloses to any potential transferee that the land was used to dispose hazardous waste and that further information on the hazardous waste site may be obtained from the cabinet.

(18) No person shall affect the integrity of the final cover, liners, or any other components of any containment system after closure of a hazardous waste site on or in which hazardous waste remains without prior written approval of the cabinet.

Approved April 2, 2004

CHAPTER 45

(SB 244)

AN ACT relating to real estate brokerage.

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

Section 1. KRS 324.020 is amended to read as follows:

(1) It shall be unlawful for any person who is not licensed as a real estate broker or sales associate to hold himself out to the public as a real estate broker or sales associate or use any terms, titles, or abbreviations which express, infer, or imply that the person is licensed as a real estate broker or sales associate.

(2) No person shall practice real estate brokerage unless the person holds a license to practice real estate brokerage under this chapter.

(3) A licensee who is an owner or a builder-developer shall comply with the provisions of this chapter and the administrative regulations applying to real estate brokers and sales associates.

(4) No broker shall split fees with or compensate any person who is not licensed to perform any of the acts regulated by this chapter, except that a broker may ***pay a referral fee to*** ~~[compensate or split fees with]~~ a broker licensed outside of Kentucky ***for referring a client to the Kentucky broker***.

(5) Except as authorized in KRS 324.112(1) and 324.425, no sales associate shall supervise another licensed sales associate or manage a real estate brokerage office.

(6) The Kentucky Real Estate Commission may seek and obtain injunctive relief against any unlicensed individual acting in violation of this chapter by filing a civil action in the Circuit Court where the commission is located or where the unlawful activity took place.

Section 2. KRS 324.046 is amended to read as follows:

(1) Every applicant for initial licensure as a broker shall have:

(a) Successfully completed not less than twenty-one (21) academic credit hours or the equivalent from an accredited institution or approved real estate school. Twelve (12) hours shall be in real estate courses, three (3) hours of which shall be a course in broker management skills. The commission shall, by promulgation of administrative regulations, determine the required course content of broker management skills courses; and

(b) Been engaged in the real estate business as a sales associate averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior to application.

(2) Every applicant for initial licensure as a sales associate shall have successfully completed six (6) academic credit hours or their equivalent in real estate courses from an accredited institution or approved real estate school.

(3) Proof of the academic credit hours shall be an official transcript from the attended university~~[and a sworn notarized affidavit signed by both the applicant and his or her principal broker]~~ or other documentation satisfactory to the commission. ***Proof of the requisite experience as a sales associate shall be either a sworn notarized statement signed by the principal broker or principal brokers or other documentation satisfactory to the commission.*** The applicant may file a complaint with the commission if the principal broker unjustly refuses to sign the ***statement*** ~~[affidavit]~~.

(4) The commission may reduce the two (2) year experience requirement for applicants for a broker's license to one (1) year, if the applicant has an associate degree in real estate or a baccalaureate degree with a major or minor in real estate.

(5) Persons licensed under the real estate laws of this state prior to June 19, 1976 shall not be subject to any educational changes in this chapter or subject to any continuing education requirements.

Section 3. KRS 324.112 is amended to read as follows:

(1) No principal broker shall maintain a branch office outside a fifty (50) mile radius of the main office without having a broker managing the branch office.

(2) A sales associate with two (2) years experience in the real estate business, averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior, may manage a branch office inside a fifty (50) mile radius of the main office.

(3) ***The principal broker shall register any branch office with the commission within ten (10) days of the creation of the branch office.***

(4) The licenses of all licensees shall be kept on file in the office in which they are actively engaged and affiliated.

(5) ~~[(4)]~~ A principal broker in the process of closing a real estate brokerage business may affiliate temporarily with another principal broker if:

(a) No other licensee is affiliated with the former principal broker;

(b) Both the former and the latter principal brokers represent to the commission that the affiliation is for the purpose of closing the former principal broker's business; and

(c) Both the former and the latter principal brokers give assurances satisfactory to the commission that no consumer will be adversely affected by the affiliation or the closing of the former principal broker's business.

Section 4. KRS 324.117 is amended to read as follows:

(1) No real estate advertising shall be intentionally false, misleading, or deceptive.

(2) The name of a deceased broker may remain a part of the firm name.

(3) An associate may have his or her name in the firm name after two (2) years' experience with the firm, averaging at least twenty (20) hours per week for twenty-four (24) months.

(4) ***Whenever any real property is listed, a licensee***~~[Any licensees affiliated with a principal broker]~~ shall ***include***~~[advertise in]~~ the name of the real estate company listed on the licensee's real estate license or the name of the principal broker ***with whom the licensee is affiliated in all advertisements of the listed property, regardless of who places the advertisement***, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property. ***If listed property is advertised by a customer or client of a listing licensee, the licensee shall, at a minimum, provide the customer or client with written notification of the requirements of this section. The licensee shall keep in his or her files a copy of the notification and any other documentation that is generated by the licensee as proof of his or her compliance with this section.***

(5) The commission shall, by the promulgation of administrative regulations, define false, misleading, or deceptive advertising.

(6) The commission shall, by the promulgation of administrative regulations, define the manner in which licensees may utilize any Internet electronic communication for advertising or marketing.

Section 5. KRS 324.121 is amended to read as follows:

(1) A principal broker may designate one (1) or more affiliated licensees to act as agent for a seller or lessor, to the exclusion of all other licensees affiliated with the principal broker. A principal broker may designate one (1) or more affiliated licensees to act as agent for a buyer or lessee, or prospective buyer or lessee to the exclusion of all other licensees affiliated with the principal broker. The designation procedure shall be made in writing and communicated to all licensees affiliated with the principal broker. The designated agent shall inform and obtain the consent of the buyer or lessee, or prospective buyer or lessee to the designation. ***The designated agent shall inform and obtain the consent of the seller or lessor to the designation. The principal broker shall not designate himself or herself as a designated agent.***

(2) If a principal broker designates one (1) or more licensees to represent the seller and one (1) or more other licensees to represent the buyer or the prospective buyer in the same transaction, only the principal broker shall be deemed to be a dual agent representing the seller and buyer in a limited fiduciary capacity. ***As a dual agent, the principal broker shall keep confidential information relating to either party in an individual file that shall be maintained and accessed by the principal broker only.*** As a dual agent, the principal broker shall not disclose to either party confidential information learned relative to the other party. Except as set forth in subsection (3) of this section, this designation shall not affect the principal broker's agency relationships in cooperative sales between consumers separately represented by nonaffiliated principal brokers.

(3) No exchange of information or knowledge between or among consumers, whether the seller, buyer, lessor, or lessee, and the principal broker, the firm, or the licensees shall be imputed as a matter of law in any real estate transaction.

(4) Nothing in this section shall prevent a real estate brokerage firm or licensee from entering into a dual agency relationship with consumers in a real estate transaction.

Section 6. KRS 324.150 is amended to read as follows:

(1) The commission or its staff may on its own initiative investigate the actions of any licensee or any person who acts in that capacity. On the verified written complaint of any person, the commission shall investigate the actions of any person who assumes to act in that capacity, if the complaint, together with any evidence presented in connection with it, alleges a prima facie case that a violation set out in KRS 324.160 has been

committed. After the investigation, the commission may order a hearing and, in appropriate cases, take disciplinary action against any licensee who is found in violation of KRS 324.160.

(2) To investigate allegations of practices violating the provisions of this chapter, the commission may:

(a) Issue subpoenas to compel attendance of witnesses and the production of ***books, papers,*** documents***, or other evidence***;

(b) Administer oaths;

(c) ***Review evidence;***

(d) Enter the office or branch office of any principal broker for the purpose of inspecting all documents required by the commission to be maintained in the principal broker's office or branch office which relate to the allegations of practices violating the provisions of this chapter;

(e) Examine witnesses; and

(f)~~[(d)]~~ Pay appropriate witness fees.

Section 7. KRS 324.160 is amended to read as follows:

(1) The commission may order any or all of the following sanctions for violation of subsections (4) to (7) of this section:

(a) Suspension of any license;

(b) Revocation of any license;

(c) Levy of fines not to exceed one thousand dollars ($1,000);

(d) Placing of any licensee on probation for a period of up to twelve (12) months;

(e) Requiring successful completion of academic credit hours or additional credit hours in real estate courses from an accredited institution or approved real estate school; or

(f) Issuing a formal or informal reprimand.

(2) A canceled license may be renewed if the licensee pays all necessary fees and meets all other active licensure requirements within one (1) year of the cancellation date. No licensee whose license is canceled shall engage in real estate brokerage during the period of cancellation or receive any compensation for real estate brokerage unless the compensation was earned prior to the effective date of the cancellation.

(3) No licensee whose license is suspended shall engage in real estate brokerage or receive any compensation for real estate brokerage unless the compensation was earned prior to the suspension period.

(4) The commission shall impose sanctions set out in subsection (1) of this section against a licensee for:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;

(c) Making any false promises of a character likely to influence, persuade, or induce;

(d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;

(e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;

1. A real estate licensee shall not directly or indirectly buy property listed with him or her or with the broker with whom the licensee is affiliated, nor acquire an interest therein, without first indicating in writing on the offer to purchase his or her status as a licensee;

2. Before a licensee becomes a party to a contract to purchase real property, the licensee shall disclose his or her status as a licensee to all parties to the transaction, in writing, on the sales contract or on the offer to purchase;

3. Before a licensee sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose, in writing, any interest in the property to all parties to the transaction;

(f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his or her principal broker in accordance with a compensation agreement between them. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;

(g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of the principal broker with whom the licensee is affiliated;

(h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his or her client strictly in accordance with the contract of employment;

(i) Paying valuable consideration to any person for services performed in violation of this chapter;

(j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or of a misdemeanor involving sexual misconduct the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction suspending the imposition of sentence;

(k) Failing to report a conviction, plea of guilty, or an "Alford" plea to a felony or a misdemeanor involving sexual misconduct to the commission;

(l) Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice;

(m) Offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;

(n) Acting in the dual capacity of licensee and undisclosed principal in any real estate transaction;

(o) Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;

(p) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with a consumer knowing that the consumer had a written outstanding contract granting exclusive agency with another real estate broker;

(q) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;

(r) Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(s) Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;

(t) Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(4);

(u) Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter;

(v) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or

(w) Gross negligence.

(5) Any conduct constituting ***a violation of the Federal Fair Housing Act***~~[an act of discrimination regarding a person's race, color, creed, sex, or national origin]~~, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)(v) of this section.

(6) No unlawful act or violation of any provision of this chapter by any affiliated licensee of the principal broker shall be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation and did not prevent it. The principal broker and his or her designated manager, if any, shall

exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure that violations of this chapter do not occur. The failure of a broker or his designated manager to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.

(7) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

Section 8. KRS 324.330 is amended to read as follows:

(1) Notice in writing shall be given to the commission by each licensee of any change of principal business location, a change of firm name, sales associate's transfer from one (1) principal broker to another, or a change of surname. The commission shall issue a new license for the unexpired period and shall charge the fee as provided in KRS 324.287(6) for effecting the change on its records. This section shall apply to both brokers and sales associates.

(2) The commission shall be notified ***in writing*** of a change of a residence address within ten (10) days.

(3) A fee shall be assessed for certification of a licensee's status with the commission.

Section 9. KRS 324.395 is amended to read as follows:

(1) All real estate licensees, except those whose licenses are in escrow in accordance with KRS 324.310(2), shall carry errors and omissions insurance to cover all activities contemplated under this chapter.

(2) The commission shall make the insurance mandated under this section available to all licensees by contracting with an insurance provider for a group policy, after competitive, sealed bidding in accordance with KRS Chapter 45A.

(3) Any policy obtained by the commission shall be available to all licensees with no right on the part of the insurance provider to cancel any licensee.

(4) Licensees shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in the policy and the financial condition of the insurance company complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage mandated under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and permissible exemptions.

(6) Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty (30) days prior to the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the annual license renewal date by each licensee who opts not to participate in the group insurance program administered by the commission.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group insurance program at a reasonable ***annual*** premium, not to exceed ***two hundred dollars ($200)*** ~~[one hundred twenty-five dollars ($125)]~~, the insurance requirement mandated by this section shall be void during the applicable contract year.

Section 10. KRS 324.990 is amended to read as follows:

(1) Any person engaging in real estate brokerage without a license shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for any subsequent offenses. A person who engages in real estate brokerage without a license due to failure to renew a previously valid Kentucky license shall not be subject to this penalty if the person is entitled to and does avail himself of the remedial provisions of KRS 324.090(3).

(2) In addition to the penalties set out in this chapter, a Circuit Court may impose an additional penalty on any person who violates any provision of this chapter by fining them not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or imprisoning them for a term not to exceed six (6) months, or both. Upon conviction, in addition to the aforesaid fine, there shall be added to the fine the amount of any real estate brokerage commission paid or received as a result of the violation or violations in question. Each transaction shall be regarded as a separate offense and shall be punished as such.

Approved April 2, 2004

CHAPTER 46

(HB 10)

AN ACT relating to children with disabilities.

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

Section 1. KRS 159.030 is amended to read as follows:

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

(a) Who is a graduate from an accredited or an approved four (4) year high school; or

(b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or

(c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or

(d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or

(e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or

(f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;

(g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.

(2) Before granting an exemption under subsection (1)(d) of this section, the board of education of the district in which the child resides shall require satisfactory evidence, in the form of***:***

(a) A signed statement of a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, chiropractor, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence, the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, chiropractor, and health officer***, except that this requirement shall not apply to a child whose treating physician, advanced registered nurse practitioner, chiropractor, or public health officer certifies that the student has a chronic physical condition that prevents or renders inadvisable attendance at school or application to study and is unlikely to substantially improve within one (1) year; or***

(b) An individual education plan specifying that placement of the child with a disability at home or in a hospital is the least restrictive environment for providing services.

Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated***, except that for an exceptional child whose treating physician, advanced registered nurse practitioner, chiropractor, or public health officer certifies that the student has a chronic physical condition unlikely to substantially improve within three (3) years, the child's admissions and release committee shall annually consider the child's condition and the existing documentation to determine whether updated evidence is required. Updated evidence shall be provided for a child upon determination of need by the admissions and release committee, or at least every three (3) years***.

(3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules, and regulations of the Kentucky Board of Education shall be provided.

Approved April 2, 2004

CHAPTER 47

(HJR 98)

A JOINT RESOLUTION relating to the regulation of the noncoal mineral industry and declaring an emergency.

WHEREAS, the Natural Resources and Environmental Protection Cabinet promulgated administrative regulations located in 405 KAR Chapter 5, effective February 22, 1995, imposing requirements on noncoal mineral operations in the Commonwealth of Kentucky; and

WHEREAS, the Natural Resources and Environmental Protection Cabinet promulgated administrative regulations located in 405 KAR Chapter 5, effective September 12, 2003, imposing additional requirements on noncoal mineral operations in the Commonwealth of Kentucky; and

WHEREAS, on August 7, 2003, the Administrative Regulation Review Subcommittee made a determination that the additional requirements imposed pursuant to the administrative regulations, which were effective on September 12, 2003, were deficient pursuant to KRS Chapter 13A; and

WHEREAS, on September 10, 2003, the Interim Joint Committee on Agriculture and Natural Resources made a determination that the additional requirements imposed pursuant to the administrative regulations, which were effective on September 12, 2003, were deficient pursuant to KRS Chapter 13A;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. Notwithstanding any provision of law to the contrary, the secretary of the Natural Resources and Environmental Protection Cabinet shall promulgate emergency and ordinary administrative regulations that are identical to the following administrative regulations that became effective on February 22, 1995, according to the records of the regulations compiler of the Legislative Research Commission:

(1) 405 KAR 5:001, except the administrative regulation shall define "tar sand or rock asphalt" and the definition of "mineral operation" shall include tar sand or rock asphalt;

(2) 405 KAR 5:030;

(3) 405 KAR 5:035;

(4) 405 KAR 5:038;

(5) 405 KAR 5:045;

(6) 405 KAR 5:060;

(7) 405 KAR 5:075; and

(8) 405 KAR 5:080.

Section 2. The administrative regulations required to be promulgated pursuant to Section 1 of this Resolution shall be promulgated within thirty (30) days of the effective date of this Resolution.

Section 3. Because it is essential for noncoal mineral operations to be regulated in the Commonwealth of Kentucky, and because it is essential to keep prices of noncoal minerals affordable and supplies adequate, an emergency is declared to exist and this Resolution shall take effect upon its passage and approval by the Governor, or upon its otherwise becoming effective.

Approved April 2, 2004

CHAPTER 48

(HB 226)

AN ACT relating to wireless communications.

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

Section 1. KRS 11.5162 is amended to read as follows:

As used in KRS 11.5161 to 11.5163, unless the context requires otherwise:

(1) "Architecture" means the design principles, physical structure, and functional organization of a land mobile radio system;

(2) "Frequency" means for a periodic function, the number of cycles or events per unit time ***that comprises the frequency spectrum used by or assigned to a wireless public safety voice or data communications system***;

(3) "Interoperability" means:

(a) ***The ability of public safety agencies to be able to communicate with one another; to exchange voice or data with one another in real time;***

(b) The ability of systems, units, or forces to provide services to and accept services from other systems, units, or forces and to use the services so exchanged to enable them to operate effectively together; and

(c)~~[(b)]~~ The condition achieved among communications-electronics systems or items of communications-electronic equipment when information or services can be exchanged directly and satisfactorily between them and their users;

(4) ***"Primary wireless public safety voice or data communications systems" means a regular interacting group of base, mobile, and associated control and fixed relay stations intended to provide land mobile radio voice or data communications service over a single area of operation for public safety agencies. This definition shall not include "911" telephone systems;***

(5) "Public safety shared infrastructure" means any component that by the nature of its function or physical characteristics can be used by multiple agencies to implement or support primary wireless public safety voice or data communications systems. This shall include but not be limited to towers, equipment shelters, radios, and other electronic equipment, backbone communications networks, and communications related software;

(6) "Public safety working group" means a working group whose mission is to design and develop a seamless coordinated plan for the use of the public safety frequency spectrum as regulated by the Federal Communications Commission;

(7)~~[(5)]~~ "Spectrum" means a usable radio frequency in the electromagnetic distribution; and

(8)~~[(6)]~~ "Standards" means:

(a) Engineering and technical requirements that are necessary to be employed in the design of systems, units, or forces and to use the services so exchanged to enable them to operate effectively together***, including but not limited to operating frequencies, over-the-air protocols, and bandwidth***; and

(b) Established protocol that provides a common interface.

Section 2. KRS 11.5163 is amended to read as follows:

(1) The chief information officer shall establish and implement a statewide public safety interoperability plan. This plan shall include the development ~~[and recommendation]~~of ***required*** architecture and standards that will insure that new or upgraded Commonwealth public safety communications systems will interoperate. ***The Kentucky Wireless Interoperability Executive Committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies.*** The chief information officer shall provide direction, stewardship, leadership, and general oversight of information technology and information resources. The chief information officer shall report by September 15 annually to the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection and the Interim Joint

Committee on State Government on progress and activity by agencies of the Commonwealth to comply with standards to achieve public safety communications interoperability.

(2) The Kentucky Wireless Interoperability Executive Committee shall serve as the advisory body for all wireless communications strategies presented by agencies of the Commonwealth ***and local governments. All state agencies in the Commonwealth shall present all project plans for primary wireless public safety voice or data communications systems for review and recommendation by the committee, and the committee shall forward the plans to the chief information officer for final approval. Local government entities shall present project plans for primary wireless public safety voice or data communications systems for review and recommendation by the Kentucky Wireless Interoperability Executive Committee*** ~~[. The committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies presented by state agencies, and shall forward these to the chief information officer for final approval]~~.

(3) ***The committee shall develop funding and support plans that provide for the maintenance of and technological upgrades to the public safety shared infrastructure, and shall make recommendations to the chief information officer, the Governor's Office for Policy and Management, and the General Assembly.***

(4) The chief information officer shall examine the project plans for primary wireless public safety voice or data communications systems of state agencies as required by subsection (2) of this section, and shall determine whether they meet the required architecture and standards for primary wireless public safety voice or data communications systems.

(5) The Kentucky Wireless Interoperability Executive Committee shall consist of twenty-one (21) members as follows:

(a) A person knowledgeable in the field of wireless communications appointed by the chief information officer who shall serve as chair;

(b) The executive director of the Office for Infrastructure Services, Governor's Office for Technology;

(c) The administrator of the Commercial Mobile Radio Service Emergency Telecommunications Board;

(d) The executive director of Kentucky Educational Television, or the executive director's designee;

(e) The chief information officer of the Transportation Cabinet;

(f) The chief information officer of the Justice Cabinet;

(g) The chief information officer of the Kentucky State Police;

(h) The commissioner of the Department of Fish and Wildlife Resources, Tourism Development Cabinet, or the commissioner's designee;

(i) The chief information officer of the National Resources and Environmental Protection Cabinet;

(j) The director of the Department of Emergency Management, Department of Military Affairs;

(k) The executive director of the Office for Security Coordination, Department of Military Affairs;

(l) The chief information officer, Department for Public Health, Cabinet for Health Services;

(m) A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;

(n) The executive director of the Center for Rural Development, or the executive director's designee;

(o) A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;

(p) A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;

(q) A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;

(r) A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;

(s) A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;

(t) A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and

(u) A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.

(6)~~[(4)]~~ Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.

(7)~~[(5)]~~ The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.

(8)~~[(6)]~~ The committee shall be attached to the Governor's Office for Technology for administrative purposes only. Members shall not be paid, and shall not be reimbursed for travel expenses.

(9)~~[(7)]~~ The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.

(10)~~[(8)]~~ The committee may establish additional working groups as determined by the committee.

Approved April 2, 2004

CHAPTER 49

(HB 167)

AN ACT relating to the Kentucky Native American Heritage Commission.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Native American Heritage Commission is hereby established to promote, in partnership with the Education, Arts and Humanities Cabinet, awareness of significant Native American influences within the historical and cultural experiences of Kentucky.

(2) The membership of the commission shall consist of seventeen (17) members who derive from geographically diverse areas of the state and who represent various heritage interests as follows:

(a) The Secretary of the Education, Arts and Humanities Cabinet, or the secretary's designee;

(b) Three (3) members from institutions of higher learning;

(c) Two (2) members from the preservation or archeological communities;

(d) One (1) member from the arts community; and

(e) Ten (10) members from the public-at-large, eight (8) of whom shall be of Native American heritage.

(3) Members listed in paragraphs (b) to (e) of subsection (2) of this section shall be appointed by the Governor and shall serve for terms of four (4) years. Any vacancy shall be filled by appointment of the Governor for the remainder of the unexpired term.

(4) Commission members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(5) From the commission membership, the Governor shall appoint a chair and vice chair of the commission. The commission may elect by majority vote other officers deemed necessary.

(6) The commission shall meet at least three (3) times per year. Notice of the time and location of each meeting shall be provided in writing to each member at least ten (10) days in advance of the meeting.

(7) A majority of the members present shall constitute a quorum.

(8) Committees may be formed at the discretion of the chair.

(9) The commission may seek and accept grants or raise funds from any available source, public or private, to accomplish its duties and responsibilities.

(10) The commission shall be attached for administrative purposes to the Kentucky Heritage Council, whose responsibilities shall include but not be limited to designating a staff person to coordinate commission staff needs and providing other staff and services as needed for the commission to perform its duties under Section 2 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

The duties of the Kentucky Native American Heritage Commission shall be to:

(1) Advise the Education, Arts and Humanities Cabinet, the Kentucky Heritage Council, and the Kentucky General Assembly on matters relating to Native American heritage;

(2) Encourage other public and private agencies within the areas of the arts, humanities, and sciences to incorporate the Native American influence when developing programs on the history and heritage of Kentucky;

(3) Represent a network of groups and individuals interested, or actively involved, in promoting awareness of Native American heritage in Kentucky;

(4) Support the preservation, conservation, and interpretation of significant buildings, sites, structures, documents, artifacts, and lifestyles that represent and embody Native American heritage; and

(5) Recognize and sanction projects that advance wider knowledge of Native Americans' contributions to, and influence and impact on, life in Kentucky.

Section 3. KRS 2.230 is amended to read as follows:

(1) The month of November of each year shall be observed in Kentucky as "Native American Indian Month" and during this month schools, clubs, and civic and religious organizations are encouraged to recognize the contributions of Native American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between Native American Indians and the non-Native American Indian people of the Commonwealth of Kentucky.

(2) The Governor shall, prior to the first day of November of each year, issue a proclamation inviting and urging the people of the Commonwealth to observe Native American Indian Month with suitable ceremony and fellowship.

(3) The Kentucky Department of Education, Kentucky Heritage Council, and the Native American Heritage Commission established ***in Section 1 of this Act*** ~~[by Executive Order 96-272]~~ shall, within the limits of funds available for this purpose, make information available to all people of this Commonwealth regarding Native American Indian Month and the observance thereof.

Approved April 2, 2004

CHAPTER 50

(HJR 214)

A JOINT RESOLUTION relating to the delegation of the governance and management responsibilities of the Lexington Community College to the Kentucky Community and Technical College System and declaring an emergency.

WHEREAS, for many years the Lexington Community College has provided comprehensive community college programs as an integral part of the University of Kentucky; and

WHEREAS, the Southern Association of Colleges and Schools, the Lexington Community College's accrediting agency, has given it probationary accreditation because it determined that Lexington Community College does not have enough autonomy to be considered a separate community college; and

WHEREAS, the University of Kentucky's board of trustees agreed that the management responsibilities of the Lexington Community College should be delegated to the Kentucky Community and Technical College System where it will be considered an autonomous institution; and

WHEREAS, it is critical that the presence of the Lexington Community College on the University of Kentucky campus be maintained for the benefit of the students and the involvement of the community; and

WHEREAS, many of the strong ties between the Lexington Community College and the University of Kentucky can be maintained through the careful development of agreements and contracts; and

WHEREAS, the transfer of the Lexington Community College to the Kentucky Community and Technical College System requires legislative action as evidenced by this joint resolution;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The University of Kentucky Board of Trustees is directed to delegate the governance and management responsibilities for the University of Kentucky Lexington Community College to the Kentucky Community and Technical College system, on or before July 1, 2004, with the following provisos:

(1) That these responsibilities include, but are not limited to, assets, liabilities, revenues, personnel, programs, financial and accounting services, support services, workers compensation claims, unemployment claims, and retirement benefits.

(2) That all funds appropriated by the General Assembly of the Commonwealth of Kentucky to support the Lexington Community College in the 2004-2006 State/Executive Branch Budget Bill, 2004 House Bill 395, shall be transferred and allotted to the Board of Regents of the Kentucky Community and Technical College System for the benefit of the Lexington Community College.

(3) That all personal property, including instructional and other moveable equipment of the Lexington Community College and the University of Kentucky designated for the use of Lexington Community College shall be transferred and allotted to the board of regents for the benefit of the Lexington Community College.

(4) That the Lexington Community College shall continue to use its current facilities including buildings, grounds, and parking areas.

(5) That restricted gifts, endowments, and sponsored projects designated for the use and benefit of Lexington Community College shall be transferred and allotted to the board of regents for the benefit of the Lexington Community College. These funds shall be managed in a manner that is consistent with any applicable donor or sponsor agreements.

(6) That the Kentucky Community and Technical College System shall reimburse the University of Kentucky at a reasonable cost for any benefits and services, including debt service applicable to Lexington Community College facilities, provided to the system. The Kentucky Community and Technical College System shall reimburse the University for the actual cost of expenditures of the health care plans and the long-term disability plan for Lexington Community College employees and retirees who are enrolled in the plans or who are beneficiaries of the plans as of July 1, 2004, and thereafter.

(7) That the employees in the Lexington Community College as of July 1, 2004, shall be governed by the University of Kentucky regulations and any subsequent changes made by the university, except that appeals shall be to the board of regents or to the board's designee. The following provisions shall apply:

   (a) Sick leave and annual vacation leave accruals as of the effective date of the transfer shall be retained by each employee.

   (b) Employees with tenure, as of the effective date of the transfer, shall retain their tenure. Employees without tenure, as of the effective date of the transfer, shall earn tenure based on personnel policies in effect at the time of their employment. New employees without tenure, as of the effective date of the transfer, shall earn tenure based on the policies established by the Board of Regents of the Kentucky Community and Technical College System.

(c) Employees shall maintain a salary not less than their previous salary as of July 1, 2004. The amounts paid to part-time and adjunct faculty per credit hour shall not be less than previously paid.

(d) All employees hired before July 1, 2004, shall be provided the same benefit package available for other University of Kentucky employees as the University of Kentucky may modify, change, consolidate, or eliminate it for all employees.

(e) A person employed as of the effective date of the transfer in the Lexington Community College may elect to become an employee in the Kentucky Community and Technical College System and be subject to the human resources policies and procedures of the Kentucky Community and Technical College System. The employee shall have the right to exercise this option at any future time after the effective date of the transfer. An employee who elects to accept this option and who remains an employee of the Kentucky Community and Technical College System may not reverse this option.

(f) A regular full-time employee may, with prior administrative approval, take up to six (6) credit hours per semester or combination of summer sessions on the University of Kentucky's campus or at a community college during the employee's normal working hours. The University of Kentucky shall defray the registration fee up to a maximum of six (6) credit hours per semester or combination of summer sessions.

(g) New employees hired on or after July 1, 2004, in the Kentucky Community and Technical College System for the Lexington Community College shall be governed by the regulations established by the board of regents.

(8) That students enrolled in the Lexington Community College through June 30, 2006, shall have all of the responsibilities, services, privileges, and rights accorded to them as University of Kentucky students. The privileges shall include, but not be limited to, tickets to athletic events, homecoming queen contests, the Great Teacher Award, and the University of Kentucky scholarship programs. These students shall pay the mandatory University of Kentucky student fees through June 30, 2006. On July 1, 2006, and thereafter, Lexington Community College students may elect to participate in student services and activities provided by the University of Kentucky and shall pay the appropriate fees for these services and activities to include the following fees: athletics, student government association, WRFL student radio, student activities, student center, student health plan, technology fee, Seaton Center fee, and student affairs. Lexington Community College students shall continue to be provided access to University of Kentucky residence halls.

(9) That students enrolled at Lexington Community College on or before September 1, 2004, shall have six (6) years to complete the degree program in which they are enrolled and receive a diploma conveyed by the University of Kentucky Board of Trustees.

(10) That the university administration is authorized to execute an agreement between the University of Kentucky Board of Trustees and the Kentucky Community and Technical College System Board of Regents relating to the Trust Indenture Covenants of the UK Consolidated Educational Buildings Revenue Bonds.

(11) That the university administration is authorized to negotiate and enter into an agreement with the Kentucky Community and Technical College System and Lexington Community College in connection with services which the university will continue to provide to the Lexington Community College and other administrative and legal issues related to the delegation of managerial responsibility, and that the agreement is to be reported to the board of trustees, the board of regents, and the Lexington Community College Advisory Board.

(12) That the Lexington Community College Advisory Board shall continue to serve in an advisory capacity.

(13) That the university administration and the Lexington Community College administration continue to develop a transfer plan to expand the legacy of students transferring from the community college to the university.

Section 2. The chief executive officer of the University of Kentucky, the Lexington Community College, and the Kentucky Community and Technical College System shall appoint a transition team, with an equal number of members representing each of these three (3) organizations, to oversee the implementation of the provisions of this resolution. The transition team shall report to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Education, and their subcommittees upon request.

Section 3. The president of the University of Kentucky and the president of the Lexington Community College are directed to notify the Southern Association of Colleges and Schools of this resolution.

Section 4. Whereas it is necessary that the governance and management responsibilities for the Lexington Community College be delegated to the Kentucky Community and Technical College System at the beginning of the fiscal year, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 2, 2004

CHAPTER 51

(HJR 64)

A JOINT RESOLUTION naming the Carter Caves State Resort Park's Lewis Caveland Lodge.

WHEREAS, for more than 125 years, the Carter Caves have held special historic interest and natural resource significance with visitors traveling first by horseback and later, in 1896, by excursion trains from Cincinnati; and

WHEREAS, since the dawn of the last century Carter County's community leaders recognized the cave land region's inestimable economic, cultural, environmental and historic value and unselfishly sought to share this treasure with all who traveled to Carter County; and

WHEREAS, in 1902, J.F. Lewis of Carter City bought the Carter Caves for a purchase price of $45,000, including about 1,000 acres of rugged land covered with virgin forest; and

WHEREAS, in 1924, the Lewis family and other community leaders including W.M. Tabor, R.M. Bagby, Dr. J. Watts Stovall, Thomas S. Yates, John M. Rose, J.A. Bagby and Wick H. Strother incorporated the Carter Caves Company, working to provide greater public access to the caves through a new road and other services; and

WHEREAS, in 1946, Grayson and Olive Hill's Rotary Clubs, in cooperation with the Carter Caves Company, undertook to secure a purchase option for the Carter Caves, and met with Governor Simeon Willis, who promised to receive the purchase and develop a state park when funds became available; and

WHEREAS, Carter County's leaders raised the necessary funds in 60 days, an accomplishment noted in Carter County's Bicentennial Committee publication "Carter County History 1838 - 1976" as "an example of what a community can do when everyone works for a common goal"; and

WHEREAS, on July 31, 1946, the Carter Caves Company sold the caves to the Commonwealth of Kentucky for use as a Kentucky state park, in a deed executed by Carter County's Lewis family, including Ollie Lewis, President, and attested by Elwood C. Lewis, Secretary; and

WHEREAS, in the decades since that sale, the Commonwealth of Kentucky has promoted and expanded the Carter Caves park to include, in 1954, the 40-acre Smokey Hollow Lake renowned for largemouth bass, bluegill, catfish and crappie, the lakeside swimming areas, extensive hiking trails and, in 1962, a beautiful fieldstone park lodge with 28 rooms and a 200-seat capacity dining room; and

WHEREAS, the Carter Caves State Resort Park is home to more than 20 caverns, including Cascade Cave, named for its underground waterfall; Bat Cave, the winter residence for thousands of rare bats; and Saltpetre Cave, whose links to historic business ventures is intertwined with Carter County's economic origins; and

WHEREAS, the Carter Caves State Resort Park's cave system is now recognized internationally as a resource for caving enthusiasts, as an educational facility for teachers and students, as a research location for geologists, ecologists and other scientists, and as a vacation destination for thousands of visitors whose potential to share this resource was made possible by the generosity, leadership and foresight of Carter County's Lewis family;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Tourism Development Cabinet shall rename the Caveland Lodge as the "Lewis Caveland Lodge."

Section 2. The Tourism Development Cabinet shall, within ninety days of the effective date of this Resolution, ensure that park signs are changed to read "Lewis Caveland Lodge." Future Carter Caves State Resort Park promotional materials, brochures and other documents shall reflect the appropriate name change for the lodge.

Approved April 2, 2004

CHAPTER 52

(HB 225)

AN ACT relating to military discharge papers.

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

Section 1. KRS 422.090 is amended to read as follows:

(1) All discharge papers, ***including Form DD-214,*** given, executed or delivered to any person in the military or naval service of the United States, which evidence his discharge from the service of the United States and show the unit or part of the department to which he was attached and from which he was discharged may be recorded in the office of the county clerk of the county in which the person discharged is a resident. Upon the presentation of such discharge papers the county clerk shall record them, without charge therefor, in a suitable book which he shall provide for that purpose.

(2) A certified or attested copy of such recorded discharge is admissible evidence in all proceedings in which such discharge may come in question or in which it might be used as legal evidence of any fact.

(3) It shall be the duty of each county clerk to index alphabetically the name of each person whose discharge papers are recorded as provided in this section and to keep such index as a permanent record in such office. ***This index shall be a public record which shall be disclosed to any member of the public.*** The index ***shall not*** ~~[may]~~ be bound with the book in which the discharge papers are recorded, ***but shall*** ~~[or may]~~ be a separate bound index~~[, to be kept with the book in which the discharge papers are recorded]~~.

(4) Except as provided in subsections (5) and (6) of this section, discharge papers recorded with the county clerk shall not be public records subject to public disclosure.

(5) Upon presentation of proper identification, the following individuals may inspect discharge papers recorded with the county clerk, obtain a certified or attested copy of discharge papers from the county clerk, or both:

(a) The veteran named in the discharge papers;

(b) His or her spouse, widow or widower, child eighteen (18) years of age or older, parent, grandparent, or sibling eighteen (18) years of age or older;

(c) Any person authorized by the veteran;

(d) A guardian, limited guardian, conservator, or limited conservator of a disabled or partially disabled veteran named in the discharge papers;

(e) An individual with power of attorney for the veteran;

(f) A funeral director handling funeral arrangements for the veteran; and

(g) The personal representative of the veteran's estate.

(6) (a) Discharge papers shall be subject to discovery under the federal and Kentucky rules of criminal and civil procedure.

(b) The county clerk shall comply with any proper court order pertaining to discharge papers.

(7) Upon presentation of proper identification, a veteran may ask the county clerk to destroy that veteran's discharge papers. Within fifteen (15) days of receiving the request, the county clerk shall destroy all copies of the discharge papers in whatever form they are being held.

(8) With regard to military discharge papers, including Form DD-214, filed before the effective date of this Act, if a county clerk has commingled such discharge papers with documents unrelated to military discharge, that county clerk, in handling such discharge papers, may comply with the provisions in subsections (4), (5), and (6) of this section as well as the provision in subsection (3) of this section that the index shall not be bound with the book in which the discharge papers are recorded but shall be a separate bound index.

Approved April 2, 2004

CHAPTER 53

(HB 202)

AN ACT relating to sewer systems.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law, rule, or regulation notwithstanding, if any city, county, public body corporate or politic, or special district or subdistrict furnishes or proposes to furnish sewage treatment utility services to customers of another sewage treatment utility by means of all or any part of the installations owned or paid for by that other sewage treatment utility, then the city, county, public body, district, or subdistrict taking over or proposing to take over the customers shall pay just compensation for these installations prior to the time the customers are taken over. If an agreement for compensation is not reached, then just compensation for the installations shall be payable by the city, county, public body, district, or subdistrict after condemnation as provided for in the Eminent Domain Act of Kentucky.

(2) There is hereby granted to any city, county, public body corporate or politic, or special district or subdistrict the power of eminent domain with respect to sewage treatment plants, facilities, and installations owned by sewage treatment utilities. This power of eminent domain shall be exercisable in the manner prescribed by the Eminent Domain Act of Kentucky.

(3) Any city, county, public body corporate or politic, or special district or subdistrict shall be entitled to surcharge customers so as to recover the amount of compensation paid for installations acquired under this section by agreement or condemnation.

Section 2. The following KRS section is repealed:

65.115 Compensation for sewage treatment utility property -- Eminent domain -- Surcharge to customers.

Approved April 2, 2004

CHAPTER 54

(HB 36)

AN ACT relating to participation of Head Start teachers in the Kentucky Teachers' Retirement System.

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

Section 1. KRS 161.549 is amended to read as follows:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by ***purchasing this service credit under the same conditions that out-of-state service credit may be purchased under KRS 161.515***~~[paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22)]~~. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

Approved April 2, 2004

CHAPTER 55

(HB 72)

AN ACT relating to nursing.

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

Section 1. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" means Kentucky Board of Nursing;

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;

(3) "Nurse" means a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse;

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;

(5) "Registered nurse" means one who is licensed under the provisions of this chapter to engage in registered nursing practice;

(6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm;

(b) The maintenance of health or prevention of illness of others;

(c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;

2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;

3. Intervening when emergency care is required as a result of drug therapy;

4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;

5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and

6. Instructing an individual regarding medications;

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;

(7) "Advanced registered nurse practitioner" means one who is registered and designated to engage in advanced registered nursing practice including the nurse anesthetist, nurse midwife, clinical nurse specialist, and nurse practitioner pursuant to KRS 314.042;

(8) "Advanced registered nursing practice" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment,

drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905, under the conditions set forth in KRS 314.042. Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

(9) "Licensed practical nurse" means one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice;

(10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;

(c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;

(d) Teaching, supervising, and delegating except as limited by the board; and

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;

(11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;

(12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;

(13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;

(14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(4);

(15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;

(16) "Credential" means a current license, registration,~~[or]~~ certificate***, or other similar authorization*** that is issued by the board~~[and that permits the practice of nursing]~~;

(17) "Dispense" means:

(a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or

(b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;

(18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;~~[and]~~

(19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician***; and***

(20) "Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care.

Section 2. KRS 314.041 is amended to read as follows:

(1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath***, that the applicant***:

(a) ~~[That the applicant]~~Has completed the basic curriculum for preparing registered nurses in an approved school of nursing and has completed requirements for graduation therefrom;

(b) Has fulfilled the requirements of KRS 214.615(1); and

(c) Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) An applicant shall be required to pass an examination in any subjects as the board may determine ***and beginning January 1, 2006, complete the clinical internship in accordance with subsection (4) of this section***. Application for licensure by examination shall be received by the board at ***the***~~[such]~~ time~~[as]~~ determined~~[by regulation]~~ by the board ***by administrative regulation***.

(3) Upon ***request, an applicant who meets the requirements of subsection (1) of this section shall be issued a provisional license that shall expire no later than six (6) months from the date of issuance. This period of time may be extended at the discretion of the board upon the provisional licensee showing that he or she has a temporary physical or mental inability to complete the clinical internship within six (6) months. The provisional licensee shall provide evidence as requested by the board to substantiate this inability.***

(4) The clinical internship shall last a minimum of one hundred twenty (120) hours and shall be completed within six (6) months of the issuance of the provisional license, unless an extension has been granted by the board pursuant to subsection (3) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A to establish procedures applicable to the documentation of completion of the internship. The internship may be completed during a clinical orientation period in a practice setting.

(5) An individual who holds a provisional license shall have the right to use the title "registered nurse applicant" and the abbreviation "RNA." An RNA shall only work under the direct supervision of a registered nurse and shall not engage in independent nursing practice.

(6) Upon the applicant's successful completion of~~[successfully completing]~~ all requirements for ***registered nurse*** licensure, the board may issue to the applicant a license to practice nursing as a registered nurse, if in the determination of the board the applicant is qualified to practice as a registered nurse in this state.

(7)~~[(4)]~~ The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the examination prescribed by the board or its equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice as a registered nurse in this state. ***An applicant who has not practiced as a registered nurse in another state or territory for at least one hundred twenty (120) hours within the first year following graduation from a school of nursing shall be required to complete the clinical internship in accordance with subsection (4) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement.***

(8)~~[(5)]~~ The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.

(9)~~[(6)]~~ Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.

(10) (a)~~[(7)]~~ ***Until November 1, 2006,*** those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title

"R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed in accordance with regulations promulgated by the board in accordance with KRS Chapter 13A and those persons granted inactive status shall not be governed by the continuing competency provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board. ***Inactive status licenses shall not be issued for renewal after October 31, 2006.***

(b) On November 1, 2006, and thereafter, a registered nurse who is retired, upon payment of a one-time fee, may apply for a special license in recognition of the nurse's retired status. A retired nurse may not practice nursing but may use the title "registered nurse" and the abbreviation "R.N."

(c) A retired registered nurse who wishes to return to the practice of nursing shall apply for reinstatement.

(d) The board shall promulgate an administrative regulation pursuant to KRS Chapter 13A to specify the fee required in paragraph (b) and reinstatement under paragraph (c) of this subsection.

(11) ~~[(8)]~~ Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(12) ~~[(9)]~~ A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

(13) A graduate of an approved prelicensure registered nurse program who has not successfully completed the licensure examination for registered nurses shall be eligible for admission to the licensure examination for licensed practical nurses following successful completion of a board-approved practical nursing role delineation course. This course shall include content on the roles and responsibilities of a licensed practical nurse and direct supervised clinical instruction.

(14) A person who has completed a prelicensure registered nurse program and holds a current, active licensed practical nurse license from another jurisdiction may apply for licensure by endorsement as a licensed practical nurse in this state.

Section 3. KRS 314.051 is amended to read as follows:

(1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:

(a) Has fulfilled the requirements of KRS 214.615(1);

(b) Has completed the required educational program in practical nursing at an approved school of nursing and has completed requirements for graduation therefrom; and

(c) Is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and examination fees if applicable, as set forth in a regulation by the board.

(3) An applicant shall be required to pass an examination in any subjects the board may determine ***and beginning January 1, 2006, complete the clinical internship in accordance with subsection (5) of this section***. Application for licensure by examination shall be received by the board at the time ~~[as]~~ determined ~~[by regulation]~~ by the board ***by administrative regulation***.

(4) ***Upon request, an applicant who meets the requirements of subsection (1) of this section shall be issued a provisional license that shall expire no later than six (6) months from the date of issuance. This period of time may be extended at the discretion of the board upon the provisional licensee showing that he or she has a temporary physical or mental inability to complete the clinical internship within six (6) months. The provisional licensee shall provide evidence as requested by the board to substantiate this inability.***

(5) The clinical internship shall last a minimum of one hundred twenty (120) hours and shall be completed within six (6) months of the issuance of the provisional license, unless an extension has been granted by the board pursuant to subsection (4) of this section. The board shall promulgate an administrative regulation in

accordance with KRS Chapter 13A to establish procedures applicable to the documentation of completion of the internship. The internship may be completed during a clinical orientation period in a practice setting.

(6) An individual who holds a provisional license shall have the right to use the title "licensed practical nurse applicant" and the abbreviation "LPNA." An LPNA shall only work under the direct supervision of a nurse and shall not engage in independent nursing practice.

(7) Upon ***the applicant's successful completion of***~~[successfully completing]~~ all requirements for ***licensed practical nurse*** licensure, the board may issue to the applicant a license to practice as a licensed practical nurse if, in the determination of the board, the applicant is qualified to practice as a licensed practical nurse in this state.

(8)~~[(5)]~~ The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the examination prescribed by the board or its equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state. ***An applicant who has not practiced as a licensed practical nurse in another state or territory for at least one hundred twenty (120) hours within the first year following graduation from a school of nursing shall be required to complete the clinical internship in accordance with subsection (5) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement.***

(9)~~[(6)]~~ Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.

(10) (a)~~[(7)]~~ ***Until November 1, 2005,*** those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A, and those persons granted inactive status shall not be governed by the continuing competency provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in this chapter and by regulation of the board. ***Inactive status licenses shall not be issued for renewal after October 31, 2005.***

(b) Beginning November 1, 2005, a licensed practical nurse who is retired, upon payment of a one-time fee, the board may issue a special license to a licensed practical nurse in recognition of the nurse's retired status. A retired nurse may not practice nursing but may use the title "licensed practical nurse" and the abbreviation "L.P.N."

(c) A retired licensed practical nurse who wishes to return to the practice of nursing shall apply for reinstatement.

(d) The board shall promulgate an administrative regulation pursuant to KRS Chapter 13A to specify the fee required in paragraph (b) and reinstatement under paragraph (c) of this subsection.

(11)~~[(8)]~~ Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter.

(12)~~[(9)]~~ A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.

Section 4. KRS 314.071 is amended to read as follows:

(1) The license of every person issued under the provisions of this chapter shall be renewed ***for a period of time as determined by the board by administrative regulation promulgated pursuant to KRS Chapter 13A***~~[at least biennially]~~ except as hereinafter provided.~~[At least six (6) weeks before the renewal date the board shall mail an application for renewal to every person to whom a license was issued during the current licensure period.]~~ The applicant shall fill in the application form and return it to the board with the renewal fee prescribed by the board in a regulation before the expiration date of his current license. Upon receipt of the application and fee

the board shall verify the accuracy of the application to determine whether the licensee has met all the requirements as set forth in this chapter and in regulations promulgated by the board, and if so, shall issue to the applicant a license to practice for the ensuing licensure period. Such license shall render the holder a legal practitioner of nursing for the period stated on it. The board shall prescribe by regulation the beginning and ending of the licensure period.

(2) Any licensee who allows his license to lapse by failing to renew the license as provided above may be reinstated by the board on payment of current fee for original licensure and by meeting the regulations of the board.

(3) ***Notice that the license must be renewed***~~[An application for renewal of license]~~ shall be sent to the last known address of each licensee ***at least six (6) weeks before the expiration date of the license***.

(4) Any person practicing nursing during the time the license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the provisions of this chapter.

Section 5. KRS 314.075 is amended to read as follows:

(1) If a licensee issues payment for a~~[biennial]~~ license to the board by a bank check that is dishonored by the bank or financial institution upon which it is drawn, and the licensee fails to reimburse the board for the amount of the check and any applicable fee within thirty (30) days of written notice from the board, the board may initiate action for the immediate temporary suspension of the license under KRS 314.089 until the licensee pays the required fee and meets all requirements for reinstatement of the license. The board shall mail written notice of the dishonored check to the licensee's address on record with the board.

(2) A licensee whose license is suspended under subsection (1) of this section may request an emergency hearing under the provisions of KRS 13B.125.

(3) Nothing in this section shall supersede the provisions of KRS 314.091.

Section 6. KRS 314.089 is amended to read as follows:

(1) The board's president or the president's designee may determine that immediate temporary suspension of a license against which disciplinary action or an investigation is pending is necessary in order to protect the public. When it appears that this action may be necessary, the executive director or the executive director's designee shall issue an emergency order suspending the nurse's license. Upon appeal of an emergency order, an emergency hearing shall be conducted in accordance with KRS 13B.125.

(2) No board member shall be disqualified from serving on a disciplinary action hearing panel for the reason that he has previously sat on a hearing panel considering temporary suspension of the same license.

(3) The board shall expedite disciplinary actions in which a license has been temporarily suspended.

(4) The order of immediate temporary suspension shall remain in effect until either reconsidered or superseded by final disciplinary action by the board.~~[In cases where disciplinary action is imposed the board may additionally order that the temporary suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.]~~

Section 7. KRS 314.091 is amended to read as follows:

(1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, credential holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(b) Has been convicted of ***any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. For the purposes of this section, "conviction" means but is not limited to pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime***~~[a misdemeanor or felony which involved fraud, deceit, a breach of trust, or~~

~~physical harm or endangerment to others, acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing~~];

(c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f) Abuses use of controlled substances, prescription medications, or alcohol;

(g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;

(i) Has a license or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth***, including action by another jurisdiction for failure to repay a student loan***;

(j) Has violated any of the provisions of this chapter;

(k) Has violated any lawful order or directive previously entered by the board;

(l) Has violated any administrative regulation promulgated by the board; or

(m) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.

(2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license or credential may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.

(4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.

(5) A final order of the board shall be by majority vote thereof.

(6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.

(7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license or credential may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 8. KRS 314.099 is amended to read as follows:

Jurisdiction, both as to person and subject matter, under KRS 314.011 to 314.161 vests with the board upon application for licensure and shall continue during periods of licensure and lapse of licensure. The jurisdiction of the board shall be continuous over the individual applicant or licensee and shall not be divested by voluntary surrender of a license***,*** ~~[or]~~ withdrawal of an application***, or expiration of a temporary work permit***.

Section 9. KRS 314.101 is amended to read as follows:

(1) This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of nursing which is incidental to the program of study by individuals enrolled in nursing education programs and refresher courses approved by the board or in graduate programs in nursing; the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties; or the practice of any currently licensed nurse of another state whose responsibilities include transporting patients into, out of, or through this state.

(2) Nothing in this chapter shall be construed as prohibiting care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any recognized or established church by adherents thereof as long as they do not engage in the practice of nursing as defined in this chapter.

(3) Nothing in this chapter shall limit, preclude, or otherwise restrict the practices of other licensed personnel in carrying out their duties under the terms of their licenses.

(4) A temporary work permit may be issued by the board to persons who have completed the requirements for, applied for, and paid the fee for licensure by~~[examination or]~~ endorsement. Temporary work permits shall be issued only for the length of time required to process applications for endorsement~~[or, in the case of applications for licensure by examination, for no longer than six (6) months from the first day of the month following completion of the program of nursing requirements,]~~ and shall not be renewed. No temporary work permit shall be issued to an applicant who has failed the licensure examination.

(5) The board may summarily withdraw a temporary work permit upon determination that the person does not meet the requirements for licensure or has disciplinary action pending against the person's license in this or another jurisdiction.

~~[(6) A new graduate who holds a temporary work permit shall have the right to use the title "registered nurse applicant" and the abbreviation "RN App" or "licensed practical nurse applicant" and the abbreviation "LPN App" according to the type of permit issued.~~

~~(7) Any nurse educated outside the United States who has passed the state board test pool examination or its equivalent as determined by the board may be issued a temporary work permit.]~~

Section 10. KRS 314.108 is amended to read as follows:

Any person licensed by the board shall***, within thirty (30) days of the entry of a final order,***~~[immediately]~~ notify the board in writing if any professional or business license that is issued to the person by any agency of the Commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, suspended, or revoked, or if renewal of continuance is denied. ***The person shall submit a certified copy of the order and a letter of explanation.***

Section 11. KRS 314.109 is amended to read as follows:

Any person ***under the jurisdiction of***~~[licensed by]~~ the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony criminal conviction***, except traffic-related misdemeanors other than operating a motor vehicle under the influence of drugs or alcohol,*** in this or any other jurisdiction. ***The person shall submit a certified copy of the order and a letter of explanation.*** Upon learning of any failure to notify the board under this section, the board may initiate an action for immediate temporary suspension under KRS 314.089 until the person submits the required notification.

Approved April 2, 2004

CHAPTER 56

(HB 323)

AN ACT relating to critical access hospitals and declaring an emergency.

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

Section 1. KRS 216.380 is amended to read as follows:

(1) The licensure category of critical access hospital is hereby created for existing licensed acute-care hospitals which qualify under this section for that status.

(2) It shall be unlawful to operate or maintain a critical access hospital without first obtaining a license from the Cabinet for Health Services. An acute-care hospital converting to a critical access hospital shall not require a certificate of need. A certificate of need shall not be required for services provided on a contractual basis in a critical access hospital. ***A certificate of need shall not be required for an existing critical access hospital to increase its acute-care bed capacity to twenty-five (25) beds.***

(3) Except as provided in subsection (4) of this section, only a hospital licensed as a general acute-care hospital may be relicensed as a critical access hospital if:

(a) The hospital is located in a county in a rural area that is:

1. Located more than a thirty-five (35) mile drive, or, where the terrain is mountainous or only secondary roads are available, located more than a fifteen (15) mile drive, from another ***acute-care*** hospital or ***critical access hospital***~~[other health facility]~~; or

2. Certified by the secretary as a necessary provider of health care services to area residents;

(b) For the purposes of paragraph (a) of this subsection, a hospital shall be considered to be located in a rural area if the hospital is not in a county which is part of a standard metropolitan statistical area, the hospital is located in a rural census tract of a metropolitan statistical area as determined under the most recent modification of the Goldsmith Modification, or is designated by the state as a rural provider. The secretary shall designate a hospital as a rural provider if the hospital is not located in a county which has the largest county population of a standard metropolitan statistical area;

(c) Except as provided in paragraph (d) of this subsection, the hospital provides not more than ***twenty-five (25)***~~[fifteen (15)]~~ acute care inpatient beds for providing ***acute*** inpatient care for a period that does not exceed, as determined on an annual, average basis, ninety-six (96) hours;

(d) If the hospital is operating swing beds under which the hospital's inpatient hospital facilities are used for the provision of extended care services, the hospital may be designated as a critical access hospital so long as the total number of beds that may be used at any time for furnishing of either extended care services or acute inpatient services does not exceed twenty-five (25) beds ~~[and the number of beds used at any time for acute inpatient services does not exceed fifteen (15) beds]~~. For the purposes of this section, any bed of a unit of the hospital that is licensed as a nursing facility at the time the hospital applies to the state for designation as a critical care access hospital shall not be counted.

(4) The secretary for health services may designate a facility as a critical access hospital if the facility:

(a) Was a hospital that ceased operations on or after ten (10) years prior to April 21, 2000; or

(b) Was a hospital that was converted to a licensed primary care center, rural health clinic, ambulatory health center, or other type of licensed health clinic or health center and, as of the effective date of that conversion, meets the criteria for licensure as a critical access hospital under this subsection or subsection (3) of this section.

(5) A critical access hospital shall provide the following services:

(a) Twenty-four (24) hour emergency-room care that the secretary determines is necessary for insuring access to emergency care services in each area served by a critical access hospital; and

(b) Basic laboratory, radiologic, pharmacy, and dietary services. These services may be provided on a part-time, off-site contractual basis.

(6) A critical access hospital may provide the following services:

(a) Swing beds or a distinct unit of the hospital which is a nursing facility in accordance with KRS Chapter 216B and subject to approval under certificate of need;

(b) Surgery;

(c) Normal obstetrics;

(d) Primary care;

(e) Adult day health care;

(f) Respite care;

(g) Rehabilitative and therapeutic services including, but not limited to, physical therapy, respiratory therapy, occupational therapy, speech pathology, and audiology, which may be provided on an off-site contractual basis;

(h) Ambulatory care;

(i) Home health services which may be established upon obtaining a certificate of need; and

(j) Mobile diagnostic services with equipment not exceeding the major medical equipment cost threshold pursuant to KRS Chapter 216B and for which there are no review criteria in the State Health Plan.

(7) ***In addition to the services that may be provided under subsection (6) of this section, a critical access hospital may establish the following units in accordance with applicable Medicare regulations and subject to certificate of need approval:***

(a) A psychiatric unit that is a distinct part of the hospital, with a maximum of ten (10) beds; and

(b) A rehabilitation unit that is a distinct part of the hospital, with a maximum of ten (10) beds notwithstanding any other bed limit contained in law or regulation.

(8) Psychiatric unit and rehabilitation unit beds operated under subsection (7) of this section shall not be counted in determining the number of beds or the average length of stay of a critical access hospital for purposes of applying the bed and average length of stay limitations under paragraph (c) of subsection (3) of this section.

(9) The following staffing plan shall apply to a critical access hospital:

(a) The hospital shall meet staffing requirements as would apply under section 1861(e) of Title XVIII of the Federal Social Security Act to a hospital located in a rural area except that:

1. The hospital need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the hospital shall be open and fully staffed, except insofar as the facility is required to make available emergency services and nursing services available on a twenty-four (24) hour basis; and

2. The hospital need not otherwise staff the facility except when an inpatient is present; and

(b) Physician assistants and nurse practitioners may provide inpatient care within the limits of their statutory scope of practice and with oversight by a physician who is not required to be on-site at the hospital.

(10)~~[(8)]~~ A critical access hospital shall have a quality assessment and performance improvement program and procedures for review of utilization of services.

(11)~~[(9)]~~ A critical access hospital shall have written contracts assuring the following linkages:

(a) Secondary and tertiary hospital referral services which shall provide for the transfer of a patient to the appropriate level of care and the transfer of patients to the critical access hospital for recuperative care;

(b) Ambulance services;

(c) Home health services; and

(d) Nursing facility services if not provided on-site.

(12)~~[(10)]~~ If the critical access hospital is part of a rural health network, the hospital shall have the following:

(a) An agreement for patient referral and transfer, development, and use of communications systems including telemetry and electronic sharing of patient data, and emergency and nonemergency transportation; and

(b) An agreement for credentialing and quality assurance with a network hospital, peer review organization, or other appropriate and qualified entity identified in the state rural health plan.

(13)~~[(11)]~~ The Cabinet for Health Services and any insurer or managed care program for Medicaid recipients that contracts with the Department for Medicaid Services for the receipt of Federal Social Security Act Title XIX funds shall provide for reimbursement of services provided to Medicaid recipients in a critical access hospital

at rates that are at least equal to those established by the Federal Health Care Financing Administration for Medicare reimbursement to a critical access hospital.

(14) ~~[(12)]~~ The Cabinet for Health Services shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section.

Section 2. Beginning on the effective date of Section 1 of this Act through June 30, 2006, no acute care hospital shall convert to a critical access hospital unless the hospital has either a feasibility study funded through the Kentucky State Office of Rural Health or has filed a written request by February 1, 2004 with the Kentucky State Office of Rural Health requesting funding for a feasibility study to be conducted.

Section 3. Whereas the Center for Medicare and Medicaid Services implemented a new federal law that, effective January 1, 2004, would allow critical access hospitals to increase their number of acute care beds up to 25 and to operate a separate psychiatric or rehabilitation unit, and further delay in implementing these changes in Kentucky would prevent Kentucky's critical access hospitals from being able to treat additional patients in need of hospital care during the influenza season when more people require treatment, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 2, 2004

CHAPTER 57

(HB 149)

AN ACT relating to Hepatitis B vaccinations for postsecondary students.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) All public and independent postsecondary education institutions shall provide first-time, full-time students with information about hepatitis B disease. The information shall include:

(a) Symptoms and treatment;

(b) The risk factors associated with hepatitis B acquisition and transmission; and

(c) Current recommendations from the United States Centers for Disease Control and Prevention, or the American College Health Association regarding the availability and effectiveness of a hepatitis B vaccination.

(2) Nothing in this section shall be construed to require the Cabinet for Health Services or the postsecondary institutions to provide or purchase vaccinations for hepatitis B.

Approved April 2, 2004

CHAPTER 58

(HB 176)

AN ACT relating to school accountability.

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

Section 1. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school

council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.

(b) Effective July 1, 2006, the Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%).

(2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) ***A student's test scores shall be counted in the accountability index of:***

(a) 1. The school in which the student is currently enrolled if the student has been enrolled in that school for at least one hundred (100) days of the school year prior to the beginning of the statewide testing period; or

2. The school in which the student was previously enrolled if the student was enrolled in that school for at least one hundred (100) days of the school year prior to the beginning of the statewide testing period; and

(b) The school district if the student is enrolled in the district for at least one hundred (100) days of the school year prior to the beginning of the statewide testing period; and

(c) The state if the student is enrolled in a Kentucky public school prior to the beginning of the statewide testing period.

(4) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

(a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;

(b) School improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff under KRS 158.782;

(e) Evaluation of school personnel; and

(f) Student transfer to successful schools.

(5) ~~[(4)]~~ (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:

1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;

2. Reviewing a school's learning environment, efficiency, and academic performance of students and the quality of the school council's data analysis and planning in accordance with KRS 160.345(2)(j);

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and

4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.

(b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal and report to the public on the resulting findings regarding each aspect of the schools' operations required under subparagraph 2. of paragraph (a) of this subsection.

(6) ~~[(5)]~~ (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.

(b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).

2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.

(7) ~~[(6)]~~ After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.

(8) ~~[(7)]~~ After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Approved April 2, 2004

CHAPTER 59

(HB 650)

AN ACT relating to health benefit plans.

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

SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of law to the contrary, an insurer that issues or renews a health benefit plan on or after January 1, 2005, and before December 31, 2007, shall not be required to include any additional state mandated benefit beyond those statutory requirements in effect for health benefits plans on the effective date of this section.

(2) An insurer issuing or renewing a health benefit plan may elect to expand coverage on any group, individual, or association health benefit plan.

(3) An insurer issuing or renewing a health benefit plan shall not suspend, limit, or modify any state mandated benefit in effect on the effective date of this section.

(4) An insurer issuing or renewing a health benefit plan shall not suspend, limit, or modify any federal mandated benefit in effect on the effective date of this section or any federal mandated benefit that becomes effective after the effective date of this section.

(5) Nothing in this section shall affect the fiscal impact statement required by KRS 6.948 to be attached to any legislation mandating health insurance benefits.

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

An insurer that offers a health benefit plan that is not a managed care plan but provides financial incentives for a covered person to access a network of providers shall:

(1) Notify the covered person, in writing, of the availability of a printed document, in a manner consistent with KRS 304.14-420 to 304.14-450, containing the following information at the time of enrollment and upon request:

(a) A current directory of the in-network providers from which the covered person may access covered services at a financially beneficial rate. The directory shall, at a minimum, provide the name, type of provider, professional office address, telephone number, and specialty designations of the network provider, if any; and

(b) In addition to making the information available in a printed document, an insurer may also make the information available in an accessible electronic format;

(2) Assure that contracts with the providers in the network contain a hold harmless agreement under which the covered person will not be balanced billed by the in-network provider except for deductibles, co-pays, coinsurance amounts, and noncovered benefits;

(3) File with the department a copy of the directory required under subsection (1) of this section;

(4) Have a process for the selection of health care providers who will be on the insurer's list of participating providers, with written policies and procedures for review and approval used by the insurer. The insurer shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;

(5) Not contract with a health care provider to limit the provider's disclosure to a covered person, or to another person on behalf of a covered person, of any information relating to the covered person's medical condition or treatment options;

(6) Not penalize a health care provider, or terminate a health care provider's contract with the insurer, because the provider discusses medically necessary or appropriate care with a covered person or another person on behalf of a covered person. The health care provider may:

(a) Not be prohibited by the insurer from discussing all treatment options with the covered person; and

(b) Disclose to the covered person or to another person on behalf of a covered person other information determined by the health care provider to be in the best interests of the covered person;

(7) Include in any agreements it enters into with providers for the provision of health care services a clause stating that, upon request, the insurer shall provide the provider with specific fees for requested codes applicable to the compensation that the provider will receive under the contract with the insurer within thirty (30) days of the date of such request;

(8) Establish a policy governing the removal of and withdrawal by health care providers from the provider network that includes the following:

(a) The insurer shall inform a participating health care provider of the insurer's removal and withdrawal policy at the time the insurer contracts with the health care provider to participate in the provider network, and when changed thereafter;

(b) If a participating health care provider's participation will be terminated or withdrawn prior to the date of the termination of the contract as a result of a professional review action, the insurer and participating health care provider shall comply with the standards in 42 U.S.C. sec. 11112; and

(c) If the insurer finds that a health care provider represents an imminent danger to an individual patient or to the public health, safety, or welfare, the medical director shall promptly notify the appropriate professional state licensing board; and

(9) Meet all requirements provided under KRS 304.17A-600 to 304.17A-633 and KRS 304.17A-700 to 304.17A-730.

Section 3. KRS 304.17A-095 is amended to read as follows:

(1) (a) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to any market segment other than a large group shall, before use thereof, file with the commissioner its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers. The insurer shall also submit a copy of the filing to the Attorney General and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the commissioner. The insurer shall submit a new filing to reflect any material change to the previously filed and approved rate filing. For all other changes, the insurer shall submit an amendment to a previously approved rate filing.

(b) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to a large group as defined in KRS 304.17A-005 shall file the rating methodology with the commissioner and shall submit a copy of the filing to the Attorney General.

(2) (a) A rate filing under this section may be used by the insurer on and after the date of filing with the commissioner prior to approval by the commissioner. A rate filing shall be approved or disapproved by the commissioner within sixty (60) days after the date of filing. Should sixty (60) days expire after the commissioner receives the filing before approval or disapproval of the filing, the filing shall be deemed approved.

(b) In the circumstances of a filing that has been deemed approved or has been disapproved under paragraph (a) of this subsection, the commissioner shall have the authority to order a retroactive reduction of rates to a reasonable rate if ***the commissioner subsequently determines that the filing contained misrepresentations or was based on fraudulent information, and if*** after applying the factors in subsection (3) of this section the commissioner determines that the rates were unreasonable. If the commissioner seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the commissioner shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.

(3) In approving or disapproving a filing under this section, the commissioner shall consider:

(a) Whether the benefits provided are reasonable in relation to the premium or fee charged;

(b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;

(c) Previous premium rates or fees for the policies or contracts to which the filing applies;

(d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;

(e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory; and

(f) The effect on the rates of any assessment made under KRS 304.17B-021; and

(g) Other factors as deemed relevant by the commissioner.

(4) The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal.

(5) At any time the commissioner, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund or future premium credit to policyholders, enrollees, and subscribers if the commissioner determines that the rates or fees previously approved are in violation of this chapter.

(6) Notwithstanding subsection (2) of this section, premium rates may be used upon filing with the department of a policy form not previously used if the filing is accompanied by the policy form filing and a minimum loss ratio guarantee. Insurers may use the filing procedure specified in this subsection only if the affected policy forms disclose the benefit of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this subsection for a policy form that does not contain the minimum loss ratio guarantee. Insurers may not amend policy forms to provide for a minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a policy form or forms, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.

(a) The minimum loss ratio shall be in writing and shall contain at least the following:

1. An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;

2. A statement certifying that all rates, fees, dues, and other charges are not excessive, inadequate, or unfairly discriminatory;

3. Detailed experience information concerning the policy forms;

4. A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data;

5. A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the following, taking into consideration adjustments for duration as set forth in administrative regulations promulgated by the commissioner:

a. Seventy percent (70%) for policies issued to individuals or for certificates issued to members of an association that does not offer coverage to small employers;

b. Seventy percent (70%) for policies issued to small groups of two (2) to ten (10) employees or for certificates issued to members of an association that offers coverage to small employers; and

c. Seventy-five percent (75%) for policies issued to small groups of eleven (11) to fifty (50) employees;

6. A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph, adjusted for duration;

7. A guarantee that the actual Kentucky lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph; and

8. If the annual earned premium volume in Kentucky under the particular policy form is less than two million five hundred thousand dollars ($2,500,000), the minimum loss ratio guarantee shall be based partially on the Kentucky earned premium and other credibility factors as specified by the commissioner.

(b) The actual Kentucky minimum loss ratio results for each year at issue shall be independently audited at the insurer's expense and the audit shall be filed with the commissioner not later than one hundred twenty (120) days after the end of the year at issue. The audit shall demonstrate the calculation of the actual Kentucky loss ratio in a manner prescribed as set forth in administrative regulations promulgated by the commissioner.

(c) The insurer shall refund premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.

(d) A Kentucky policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund relative to the premium paid by the policyholder. The refund shall be made to all Kentucky policyholders insured under the applicable policy form during the year at issue if the refund

would equal ten dollars ($10) or more per policy. The refund shall include statutory interest from July 1 of the year at issue until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.

(e) Premium refunds of less than ten dollars ($10) per insured shall be aggregated by the insurer and paid to the Kentucky State Treasury.

(f) None of the provisions of subsections (2) and (3) of this section shall apply if premium rates are filed with the department and accompanied by a minimum loss ratio guarantee that meets the requirements of this subsection. Such filings shall be deemed approved. Each insurer paying a risk assessment under KRS 304.17B-021 may include the amount of the assessment in establishing premium rates filed with the commissioner under this section. The insurer shall identify any assessment allocated.

(g) The policy form filing of an insurer using the filing procedure with a minimum loss ratio guarantee will disclose to the enrollee, member, or subscriber as prescribed by the commissioner an explanation of the lifetime loss ratio guarantee, and the actual loss ratio, and any adjustments for duration.

(h) The insurer who elects to use the filing procedure with a minimum loss ratio guarantee shall notify all policyholders of the refund calculation, the result of the refund calculation, the percent of premium on an aggregate basis to be refunded if any, any amount of the refund attributed to the payment of interests, and an explanation of amounts less than ten dollars ($10).

(7) The commissioner may by administrative regulation prescribe any additional information related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she deems necessary and relevant to be included in the filings and the form of the filings required by this section. When determining a loss ratio for the purposes of loss ratio guarantee, the insurer shall divide the total of the claims incurred, plus preferred provider organization expenses, case management and utilization review expenses, plus reinsurance premiums less reinsurance recoveries by the premiums earned less state and local premium taxes less other assessments. For purposes of determining the loss ratio for any loss ratio guarantee pursuant to this section, the commissioner may examine the insurer's expenses for preferred provider organization, case management, utilization review, and reinsurance used by the insurer in calculating the loss ratio guarantee for reasonableness. Only those expenses found to be reasonable by the commissioner may be used by the insurer for determining the loss ratio for purposes of any loss ratio guarantee.

(8) (a) The commissioner shall hold a hearing upon written request by the Attorney General. The written request shall be based upon one (1) or more of the reasons set out in subsection (3) of this section and shall state the applicable reasons.

(b) An insurer may request a hearing, pursuant to KRS 304.2-310, with regard to any action taken by the commissioner under this section as to the disapproval of rates or an order of a retroactive reduction of rates.

(c) The hearing shall be a public hearing conducted in accordance with KRS 304.2-310.

Section 4. KRS 304.17A-250 is amended to read as follows:

(1) The commissioner shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan***. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets***~~[that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. As a condition of doing business in the small group market in the Commonwealth, the health insurer shall offer the standard health benefit plan, but the extent to which the standard health benefit plan shall be offered on a guaranteed issue basis shall only be as provided in KRS 304.17A-200. As a condition of doing business in the individual market on or after January 1, 2001, a health insurer shall offer the standard health benefit plan]~~. Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually.~~[Initially, the standard health benefit plan shall be the standard high plan in effect on April 10, 1998.]~~

(2) ***If offered,*** the standard health benefit plan ***may***~~[shall]~~ be available in at least one (1) of these four (4) forms of coverage:

(a) A fee-for-service product type;

(b) A health maintenance organization type;

(c) A point-of-service type; and

(d) A preferred provider organization type.

(3) The standard health benefit plan shall be defined so that it meets the requirements of KRS 304.17B-021 for inclusion in calculating assessments and refunds under Kentucky Access.

(4) Any health insurer who ***offers the standard health benefit plan may*** ~~[elects to offer health insurance policies in the individual or small group markets in this state shall, as a condition of offering health benefit plans in this state after June 30, 1998,]~~ offer ~~[and issue]~~the standard health benefit plan in the individual or small group markets in each and every form of coverage that the health insurer offers to sell.

(5) Nothing in this section shall be construed:

(a) To require a health insurer to offer a standard health benefit plan in a form of coverage that the health insurer has not selected;

(b) To prohibit a health insurer from offering other health benefit plans in the individual or small group markets in addition to the standard health benefit plan; or

(c) To require that a standard health benefit plan have guaranteed issue, renewability, or pre-existing condition exclusion rights or provisions that are more generous to the applicant than the health insurer would be required to provide under KRS 304.17A-200, 304.17A-220, 304.17A.230, and 304.17A-240.

(6)~~[Insurance agents licensed under this chapter who present for sale any health benefit plan in the individual or small group markets to a prospective applicant shall also inform that person of the existence of the standard benefit plan in the same form of coverages offered by the same insurer.~~

~~(7) (a) A benefits comparison shall be delivered to a prospective applicant for any health insurance coverage in the individual or small group markets at the time of initial solicitation through means that prominently direct the attention of the prospective applicant to the document and its purpose.~~

~~1. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of a benefits comparison.~~

~~2. In the case of agent solicitations, an agent shall deliver the benefits comparison to the prospective applicant prior to the presentation of an application or enrollment form.~~

~~3. In the case of direct response solicitations, the benefits comparison shall be presented in conjunction with any application or enrollment form.~~

~~(b) The benefits comparison given to a prospective applicant shall include:~~

~~1. A description of the principal benefits and coverage provided in the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant;~~

~~2. A statement of the principal exclusions, reductions, and limitations contained in the standard health benefit plan offered under this section, and the health benefit plan being offered to the prospective applicant; and~~

~~3. A chart providing a direct comparison of the insurer's premium rate for the standard health benefit plan offered under this section, and the health benefit policy being offered to the prospective applicant.~~

~~(c) At the time of the execution of an application for any health benefit plan, the prospective applicant shall sign a statement contained in or accompanying the application, which shall remain on file with the health insurer for five (5) years, indicating that the insured has been provided with and understands the benefits comparison required by this subsection.~~

~~(d) As used in this subsection and in subsection (6) of this section, the term "prospective applicant" refers only to a natural person who is a resident of the Commonwealth and who is purchasing health insurance coverage in the individual market providing benefits to that person, that person's spouse, or that person's children. It does not include an employer or representative of an employer who is considering health insurance coverage that would provide benefits to employees and their families.~~

~~(8)]~~ All health benefit plans shall cover hospice care at least equal to the Medicare benefits.

(7)~~[(9)]~~ All health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the commissioner as provided in KRS 304.18-085.

(8)~~[(10)]~~ Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.

(9)~~[(11)]~~ A self-insured plan may select any third party administrator licensed under KRS 304.9-052 to adjust or settle claims for persons covered under the self-insured plan.

(10)~~[(12)]~~ Any health insurer that fails to issue a premium rate quote to an individual within thirty (30) days of receiving a properly completed application request for the quote shall be required to issue coverage to that individual and shall not impose any pre-existing conditions exclusion on that individual with respect to the coverage. Each health insurer offering individual health insurance coverage in the individual market in the Commonwealth that refuses to issue a health benefit plan to an applicant or insured with a disclosed high-cost condition as specified in KRS 304.17B-001 or for any reason, shall provide the individual with a denial letter within twenty (20) working days of the request for coverage. The letter shall include the name and title of the person making the decision, a statement setting forth the basis for refusing to issue a policy, a description of Kentucky Access, and the telephone number for a contact person who can provide additional information about Kentucky Access.

(11)~~[(13)]~~ If a standard health benefit plan covers services that the plan's insureds lawfully obtain from health departments established under KRS Chapter 212, the health insurer shall pay the plan's established rate for those services to the health department.

(12)~~[(14)]~~ No individually insured person shall be required to replace an individual policy with group coverage on becoming eligible for group coverage that is not provided by an employer. In a situation where a person holding individual coverage is offered or becomes eligible for group coverage not provided by an employer, the person holding the individual coverage shall have the option of remaining individually insured, as the policyholder may decide. This shall apply in any such situation that may arise through an association, an affiliated group, the Kentucky state employee health insurance plan, or any other entity.

Section 5. KRS 304.17A-330 is amended to read as follows:

(1) All insurers authorized to write health insurance in this state and employer-organized associations that self-insure shall transmit at least annually by July 31 to the commissioner the following information, in a format prescribed by the commissioner, on their insurance experience in this state for the preceding calendar year:

(a)~~[(1)]~~ Total premium by product type and market segment;

(b)~~[(2)]~~ Total enrollment by product type and market segment;

(c)~~[(3)]~~ Total cost of medical claims filed by product type and market segment;

(d)~~[(4)]~~ Total amount of medical claims paid by the insurer and insured by product type and market segment;

(e)~~[(5)]~~ Total policies canceled by type and the aggregate reasons therefor; and

(f)~~[(6)]~~ List of total health and medical services paid for, grouped by types of services and costs:

1.~~[(a)]~~ Total cost per health and medical service per insured group:

a.~~[1.]~~ Cost paid by insurer;

b.~~[2.]~~ Cost paid by insured; and

2.~~[(b)]~~ Number of insureds who received each service.

(2) With the approval of the commissioner, the department may exempt insurers, employer-organized associations that self-insure, and health purchasing outlets from the data reporting requirements of this section if the total number of insureds is less than five hundred (500).

Section 6. KRS 304.17A-500 is amended to read as follows:

As used in KRS 304.17A-500 to 304.17A-590, unless the context requires otherwise:

(1) "Areas other than urban areas" means a classification code that does not meet the definition of urban area;

(2) "Contract holder" means an employer or organization that purchases a ***health benefit plan***~~[contract for services]~~;

(3) "Covered person" means a person on whose behalf an insurer offering the plan is obligated to pay benefits or provide services under the health insurance policy;

(4) "Emergency medical condition" means:

(a) A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson would reasonably have cause to believe constitutes a condition that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of any bodily organ or part; or

(b) With respect to a pregnant woman who is having contractions:

1. A situation in which there is inadequate time to effect a safe transfer to another hospital before delivery; or

2. A situation in which transfer may pose a threat to the health or safety of the woman or the unborn child;

(5) "Enrollee" means a person who is enrolled in a~~[managed health care]~~ plan ***offered by a health maintenance organization as defined in KRS 304.38-030(5)***;

(6) "Grievance" means a written complaint submitted by or on behalf of an enrollee;

(7) "Health insurance policy" means "health benefit plan" as defined in KRS 304.17A-005;

(8) "Insurer" has the meaning provided in KRS 304.17A-005;

(9) "Managed care plan" means a health insurance policy that integrates the financing and delivery of appropriate health care services to ***enrollees***~~[covered persons]~~ by arrangements with participating providers who are selected to participate on the basis of explicit standards to furnish a comprehensive set of health care services and financial incentives for ***enrollees***~~[covered persons]~~ to use the participating providers and procedures provided for in the plan;

(10) "Participating health care provider" means a health care provider that has entered into an agreement with an insurer to provide health care services~~[to an enrollee in its managed care plan]~~;

(11) "Quality assurance or improvement" means the ongoing evaluation by a managed care plan of the quality of health care services provided to its enrollees;

(12) "Record" means any written, printed, or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to a patient;

(13) "Risk sharing arrangement" means any agreement that allows an insurer to share the financial risk of providing health care services to enrollees or insureds with another entity or provider where there is a chance of financial

loss to the entity or provider as a result of the delivery of a service. A risk sharing arrangement shall not include a reinsurance contract with an accredited or admitted reinsurer;

(14) "Urban area" means a classification code whereby the zip code population density is greater than three thousand (3,000) persons per square mile; and

(15) "Utilization management" means a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the plan. The system may include preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures, and retrospective review.

Section 7. KRS 304.17A-520 is amended to read as follows:

(1) An enrollee shall have adequate choice among participating primary care providers in a managed care plan who are accessible and qualified.

(2) A managed care plan shall permit enrollees to choose their own primary care provider from a list of health care providers within the plan. This list shall be updated as health care providers are added or removed and shall include a sufficient number of primary care providers who are accepting new enrollees.

(3) Women shall be able to choose a qualified health care provider offered by a plan for the provision of covered care necessary to provide routine and preventive women's health care services.

(4) ***An insurer***~~[A managed care plan]~~ shall provide ***a covered person***~~[an enrollee]~~ with access to a consultation with a participating health care provider for a second opinion. Obtaining the second opinion shall not cost a covered person more than the covered person's normal copay ***or coinsurance amounts***.

Section 8. KRS 304.17A-527 is amended to read as follows:

(1) A managed care plan~~[as defined in KRS 304.17A-500]~~ shall file with the commissioner sample copies of any agreements it enters into with providers for the provision of health care services. The commissioner shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements ~~[and contracts entered into or renewed after July 15, 2002,]~~shall include the following:

(a) A hold harmless clause that states that the provider may not, under any circumstance, including:

1. Nonpayment of moneys due the providers by the managed care plan,

2. Insolvency of the managed care plan, or

3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;

(b) A continuity of care clause that states that if an agreement between the provider and the managed care plan is terminated for any reason, other than a quality of care issue or fraud, the provider shall continue to provide services and ***the plan shall continue to*** reimburse the provider in accordance with the agreement until the subscriber, dependent of the subscriber, or the enrollee is discharged from an inpatient facility, or the active course of treatment is completed, whichever time is greater, and in the case of a pregnant woman, services shall continue to be provided through the end of the post-partum period if the pregnant woman is in her fourth or later month of pregnancy ***at the time the agreement is terminated***;

(c) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the managed care plan;

(d) A clause stating that, upon request, the insurer shall provide the provider with specific fees for requested codes applicable to the compensation that the provider will receive under the contract with the insurer within thirty (30) days of the date of such request; and

(e) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide their licensed health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the managed care plan or subscriber or enrollee directly for the subcontracted services, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the commissioner in accordance with this subsection.

(2) An insurer ***that offers a health benefit plan*** that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the commissioner. The insurer shall also file the following information regarding the risk-sharing arrangement:

(a) The number of enrollees affected by the risk-sharing arrangement;

(b) The health care services to be provided to an enrollee under the risk-sharing arrangement;

(c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;

(d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with KRS 304.17A-500 to 304.17A-590 in exercising any delegated administrative functions; and

(e) The insurer's oversight and compliance plan regarding the standards and method of review.

(3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The commissioner shall have access to a specific risk sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the department shall be considered to be a trade secret and shall not be subject to KRS 61.872 to 61.884.

Section 9. KRS 304.17A-532 is amended to read as follows:

(1) As used in this section, "hospitalist" means a physician of record at a hospital for a patient of a participating physician and who may return the care of the patient to that physician at the end of the hospitalization.

(2) A contract between ***an insurer***~~[a managed care plan]~~ and a physician shall not require the mandatory use of a hospitalist.

Section 10. KRS 304.17A-550 is amended to read as follows:

(1) An insurer that offers a managed care plan shall offer a health benefit plan with out-of-network benefits to every contract holder***. The plan with out-of-network benefits shall***~~[that would]~~ allow a covered person to receive covered services from out-of-network health care providers without having to obtain a referral. The plan with out-of-network benefits may require that an enrollee pre-certify selected services and pay a higher deductible, copayment, coinsurance, excess charges and higher premium for the out-of-network benefit plan pursuant to limits established by administrative regulations promulgated by the department.

(2) ***If the contract holder elects the out-of-network offering required under subsection (1) of this section, the***~~[An]~~ insurer shall provide each enrollee~~[in a plan whose employer group elects the benefit plan with out-of-network benefits,]~~ with the opportunity at the time of enrollment and during the annual open enrollment period, to enroll in the out-of-network option. ***If the contract holder elects the out-of-network offering required under subsection (1) of this section,*** the insurer and ***the contract holder***~~[employer group]~~ shall provide written notice of the benefit plan with out-of-network benefits to each enrollee in a plan~~[whose employer group elects the benefit plan with out-of-network benefits]~~ and shall include in that notice a detailed explanation of the financial costs to be incurred by an enrollee who selects the plan.

(3) The requirement of this section shall not apply to an insurer contract which offers a managed care plan that provides health care services solely to Medicaid or Medicare recipients.

(4) Managed care plans currently licensed and doing business in Kentucky that do not yet offer benefit plans with out-of-network benefits must develop and offer those plans within three hundred sixty-five (365) days of April 10, 1998.

Section 11. KRS 304.17A-600 is amended to read as follows:

As used in KRS 304.17A-600 to 304.17A-633:

(1) (a) "Adverse determination" means a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are:

1. Not medically necessary, as determined by the insurer, or its designee or experimental or investigational, as determined by the insurer, or its designee; and

2. Benefit coverage is therefore denied, reduced, or terminated.

(b) "Adverse determination" does not mean a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are specifically limited or excluded in the covered person's health benefit plan;

(2) "Authorized person" means a parent, guardian, or other person authorized to act on behalf of a covered person with respect to health care decisions;

(3) "Concurrent review" means utilization review conducted during a covered person's course of treatment or hospital stay;

(4) "Covered person" means a person covered under a health benefit plan;

(5) "External review" means a review that is conducted by an independent review entity which meets specified criteria as established in KRS 304.17A-623, 304.17A-625, and 304.17A-627;

(6) "Health benefit plan" means the document evidencing and setting forth the terms and conditions of coverage of any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network policy or certificate; a self-insured policy or certificate or a policy or certificate provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; or limited health service benefit plans; and for purposes of KRS 304.17A-600 to 304.17A-633 includes short-term coverage policies;

(7) "Independent review entity" means an individual or organization certified by the department to perform external reviews under KRS 304.17A-623, 304.17A-625, and 304.17A-627;

(8) "Insurer" means any of the following entities authorized to issue health benefit plans as defined in subsection (6) of this section: an insurance company, health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association; nonprofit hospital, medical-surgical, or health service corporation; or any other entity authorized to transact health insurance business in Kentucky;

(9) "Internal appeals process" means a formal process, as set forth in KRS 304.17A-617, established and maintained by the insurer, its designee, or agent whereby the covered person, an authorized person, or a provider may contest an adverse determination rendered by the insurer, its designee, or private review agent;

(10) "Nationally recognized accreditation organization" means a private nonprofit entity that sets national utilization review and internal appeal standards and conducts review of insurers, agents, or independent review entities for the purpose of accreditation or certification. Nationally recognized accreditation organizations shall include the National Committee for Quality Assurance (NCQA), the American Accreditation Health Care Commission (URAC), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or any other organization identified by the department;

(11) "Private review agent" or "agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any insurer or other person providing or administering health

benefits to citizens of this Commonwealth. "Private review agent" or "agent" does not include an independent review entity which performs external review of adverse determinations;

(12) "Prospective review" means utilization review that is conducted prior to a hospital admission or a course of treatment;

(13) "Provider" shall have the same meaning as set forth in KRS 304.17A-005;

(14) "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other licensed medical personnel who through training and experience shall render consistent decisions based on the review criteria;

(15) "Registration" means an authorization issued by the department to an insurer or a private review agent to conduct utilization review;

(16) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person. "Retrospective review" does not include the review of a claim that is limited to an evaluation of reimbursement levels, or adjudication of payment;

(17) ***(a) "Urgent care" means health care or treatment with respect to which the application of the time periods for making nonurgent determination:***

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

2. In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the utilization review; and

(b) "Urgent care" shall include all requests for hospitalization and outpatient surgery;

(18) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment. Areas of review include concurrent, prospective, and retrospective review; and

(19) ~~[(18)]~~ "Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.

Section 12. KRS 304.17A-607 is amended to read as follows:

(1) An insurer or private review agent shall not provide or perform utilization reviews without being registered with the department. A registered insurer or private review agent shall:

(a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;

(b) Ensure that only licensed physicians shall:

1. Make a utilization review decision to deny, reduce, limit, or terminate a health care benefit or to deny, or reduce payment for a health care service because that service is not medically necessary, experimental, or investigational except in the case of a health care service rendered by a chiropractor or optometrist where the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and

2. Supervise qualified personnel conducting case reviews;

(c) Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;

(d) Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except as provided in the Health Insurance Portability and Accountability Act, Subtitle F, secs. 261 to 264 and 45 C.F.R. secs. 160 to 164 and other applicable laws and administrative regulations;

(e) Provide a toll free telephone line for covered persons, authorized persons, and providers to contact the insurer or private review agent and be accessible to covered persons, authorized persons, and providers for forty (40) hours a week during normal business hours in this state;

(f) Where an insurer, its agent, or private review agent provides or performs utilization review, be available to conduct utilization review during normal business hours and extended hours in this state on Monday and Friday through 6:00 p.m., including federal holidays;

(g) Provide decisions to covered persons, authorized persons, and all providers on appeals of adverse determinations and coverage denials of the insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with KRS 304.17A-609;

(h) ***Except for retrospective review of an emergency admission where the covered person remains hospitalized at the time the review request is made, which shall be considered a concurrent review,*** provide a utilization review decision ***relating to urgent and nonurgent care in accordance with 29 C.F.R. Part 2560, including the timeframes and*** ~~[within the timeframes listed in this paragraph that will be followed by]~~ written notice of the decision ~~[within one (1) business day of the date the decision is rendered]~~. A written notice in electronic format, including e-mail or facsimile, may suffice for this purpose where the covered person, authorized person, or provider has agreed in advance in writing to receive such notices electronically and shall include the required elements of subsection (j) of this section ~~[:~~

~~1. Within twenty-four (24) hours of a request for:~~

~~a. Preadmission review of a hospital admission, unless additional information is needed;~~

~~b. Preauthorization of treatment when the covered person is already hospitalized; or~~

~~c. Retrospective review of an emergency hospital admission;~~

~~2. Within two (2) business days of receipt of a request for preauthorization for a treatment, procedure, drug, or device, unless there is a documented need for additional information; and~~

~~3. Within twenty (20) business days of the receipt of requested medical information when the insurer or private review agent has initiated a retrospective review]~~;

(i) Provide a utilization review decision within twenty-four (24) hours of receipt of a request for review of a covered person's continued hospital stay and prior to the time when a previous authorization for hospital care will expire;

(j) Provide written notice of review decisions to the covered person, authorized person, and providers. An insurer or agent that denies coverage or reduces payment for a treatment, procedure, drug ***that requires prior approval***, or device shall include in the written notice:

1. A statement of the specific medical and scientific reasons for denial or reduction of payment ***or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available***;

2. The state of licensure, medical license number, and the title of the reviewer making the decision;

3. ***Except for retrospective review,*** a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and

4. Instructions for initiating or complying with the insurer's internal appeal procedure, as set forth in KRS 304.17A-617, stating, at a minimum, whether the appeal shall be in writing, and any specific filing procedures, including any applicable time limitations or schedules, and the position and phone number of a contact person who can provide additional information;

(k) Afford participating physicians an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and afford other participating providers an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice; and

(l) Comply with its own policies and procedures on file with the department or, if accredited or certified by a nationally recognized accrediting entity, comply with the utilization review standards of that accrediting entity where they are comparable and do not conflict with state law.

(2) The insurer's failure to make a determination and provide written notice within the time frames set forth in this section shall be deemed to be an adverse determination by the insurer for the purpose of initiating an internal appeal as set forth in KRS 304.17A-617. This provision shall not apply where the failure to make the determination or provide the notice results from circumstances which are documented to be beyond the insurer's control.

(3) An insurer or private review agent shall submit a copy of any changes to its utilization review policies or procedures to the department. No change to policies and procedures shall be effective or used until after it has been filed with and approved by the commissioner.

(4) A private review agent shall provide to the department the names of the entities for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of any change.

Section 13. KRS 304.17A-617 is amended to read as follows:

(1) Every insurer shall have an internal appeal process to be utilized by the insurer or its designee, consistent with this section and KRS 304.17A-619 and which shall be disclosed to covered persons in accordance with KRS 304.17A-505(1)(g). An insurer shall disclose the availability of the internal process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial which meets the requirements set forth in KRS 304.17A-607(1)(j). For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan. Where a coverage denial is involved, in addition to stating the reason for the coverage denial, the required notice shall contain instructions for filing a request for internal appeal.

(2) The internal appeals process may be initiated by the covered person, an authorized person, or a provider acting on behalf of the covered person. The internal appeals process shall include adequate and reasonable procedures for review and resolution of appeals concerning adverse determinations made under utilization review and of coverage denials, including procedures for reviewing appeals from covered persons whose medical conditions require expedited review. At a minimum, these procedures shall include the following:

(a) Insurers or their designees shall provide decisions to covered persons, authorized persons, and providers on internal appeals of adverse determinations or coverage denials within thirty (30) days of receipt of the request for internal appeal;

(b) Insurers or their designees shall render a decision not later than three (3) business days after receipt of the request for an expedited appeal of either an adverse determination or a coverage denial. An expedited appeal is deemed necessary when a covered person is hospitalized or, in the opinion of the treating provider, review under a standard time frame could, in the absence of immediate medical attention, result in any of the following:

1. Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or the unborn child in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of a bodily organ or part;

(c) Internal appeal of an adverse determination shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, the insurer or agent shall, upon request by a covered person, authorized person, or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area to conduct the internal appeal;

(d) Those portions of the medical record that are relevant to the internal appeal, if authorized by the covered person and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information;

(e) In addition to any previous notice required under KRS 304.17A-607(1)(j), and to facilitate expeditious handling of a request for external review of an adverse determination or a coverage denial, an insurer or agent that denies, limits, reduces, or terminates coverage for a treatment, procedure, drug, or device for a covered person shall provide the covered person, authorized person, or provider acting on behalf of the covered person with an internal appeal determination letter that shall include:

1. A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;

2. The state of licensure, medical license number, and the title of the person making the decision;

3. ***Except for retrospective review,*** a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and

4. Instructions for initiating an external review of an adverse determination, or filing a request for review with the department if a coverage denial is upheld by the insurer on internal appeal.

(3) The department shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers. For purposes of this subsection "coverage denials" shall not include an adverse determination as defined in KRS 304.17A-600 or subsequent denials arising from an adverse determination.

(a) On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the department shall notify the insurer which issued the denial of the request for review and shall call for the insurer to respond to the department regarding the request for review within five (5) days of receipt of notice to the insurer;

(b) Within five (5) days of receiving the notice of the request for review from the department, the insurer shall provide to the department the following information:

1. Confirmation as to whether the person who received or sought the health service for which coverage was denied was a covered person under a health benefit plan issued by the insurer on the date the service was sought or denied;

2. Confirmation as to whether the covered person, authorized person, or provider has exhausted his or her rights under the insurer's appeal process under this section; and

3. The reason for the coverage denial, including the specific limitation or exclusion of the health benefit plan demonstrating that coverage is not available;

(c) In addition to the information described in paragraph (b) of this subsection, the insurer and the covered person, authorized person, or provider shall provide to the department any information requested by the department that is germane to its review;

(d) On the receipt of the information described in paragraphs (b) and (c) of this subsection, unless the department is not able to do so because making a determination requires resolution of a medical issue, it shall determine whether the service, treatment, drug, or device is specifically limited or excluded under the terms of the covered person's health benefit plan. If the department determines that the treatment, service, drug, or device is not specifically limited or excluded, it shall so notify the insurer, and the insurer shall either cover the service, or afford the covered person an opportunity for external review under KRS 304.17A-621, 304.17A-623, and 304.17A-625, where the conditions precedent to the review are present. If the department notifies the insurer that the treatment, service, drug, or device is specifically limited or excluded in the health benefit plan, the insurer is not required to cover the service or afford the covered person an external review;

(e) An insurer shall be required to cover the treatment, service, drug, or device that was denied or provide notification of the right to external review in accordance with paragraph (d) of this subsection whether the covered person has disenrolled or remains enrolled with the insurer;

(f) If the covered person has disenrolled with the insurer, the insurer shall only be required to provide the treatment, service, drug, or device that was denied for a period not to exceed thirty (30) days, or provide the covered person the opportunity for external review.

Section 14. KRS 304.17A-623 is amended to read as follows:

(1) Every insurer shall have an external review process to be utilized by the insurer or its designee, consistent with this section and which shall be disclosed to covered persons in accordance with KRS 304.17A-505(1)(g). An insurer, its designee, or agent shall disclose the availability of the external review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial as set forth in KRS 304.17A-607(1)(j) and in the denial letter required in KRS 304.17A-617(1) and (2)(e). For purposes of

this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan.

(2) A covered person, an authorized person, or a provider acting on behalf of and with the consent of the covered person, may request an external review of an adverse determination rendered by an insurer, its designee, or agent.

(3) The insurer shall provide for an external review of an adverse determination if the following criteria are met:

(a) The insurer, its designee, or agent has rendered an adverse determination;

(b) The covered person has completed the insurer's internal appeal process, or the insurer has failed to make a timely determination or notification as set forth in KRS 304.17A-619(2). The insurer and the covered person may however, jointly agree to waive the internal appeal requirement;

(c) The covered person was enrolled in the health benefit plan on the date of service or, if a prospective denial, the covered person was enrolled and eligible to receive covered benefits under the health benefit plan on the date the proposed service was requested; and

(d) The entire course of treatment or service will cost the covered person at least one hundred dollars ($100) if the covered person had no insurance.

(4) The covered person, an authorized person, or a provider with consent of the covered person shall submit a request for external review to the insurer within sixty (60) days, except as set forth in KRS 304.17A-619(1), of receiving notice that an adverse determination has been timely rendered under the insurer's internal appeal process. As part of the request, the covered person shall provide to the insurer or its designee written consent authorizing the independent review entity to obtain all necessary medical records from both the insurer and any provider utilized for review purposes regarding the decision to deny, limit, reduce or terminate coverage.

(5) The covered person shall be assessed a one (1) time filing fee of twenty-five dollars ($25) to be paid to the independent review entity and which may be waived if the independent review entity determines that the fee creates a financial hardship on the covered person. The fee shall be refunded if the independent review entity finds in favor of the covered person.

(6) A covered person shall not be afforded an external review of an adverse determination if:

(a) The subject of the covered person's adverse determination has previously gone through the external review process and the independent review entity found in favor of the insurer; and

(b) No relevant new clinical information has been submitted to the insurer since the independent review entity found in favor of the insurer.

(7) The department shall establish a system for each insurer to be assigned an independent review entity for external reviews. The system established by the department shall be prospective and shall require insurers to utilize independent review entities on a rotating basis so that an insurer does not have the same independent review entity for two (2) consecutive external reviews. The department shall contract with no less than two (2) independent review entities.

(8) (a) If a dispute arises between an insurer and a covered person regarding the covered person's right to an external review, the covered person may file a complaint with the department. Within five (5) days of receipt of the complaint, the department shall render a decision and may direct the insurer to submit the dispute to an independent review entity for an external review if it finds:

1. The dispute involves denial of coverage based on medical necessity or the service being experimental or investigational; and

2. All of the requirements of subsection (3) of this section have been met.

(b) The complaint process established in this section shall be separate and distinct from, and shall in no way limit other grievance or complaint processes available to consumers under other provisions of the KRS or duly promulgated administrative regulations. This complaint process shall not limit, alter, or supplant the mechanisms for appealing coverage denials established in KRS 304.17A-617.

(9) The external review process shall be confidential and shall not be subject to KRS 61.805 to 61.850 and KRS 61.870 to 61.884.

(10) External reviews shall be conducted in an expedited manner by the independent review entity if the covered person is hospitalized, or if, in the opinion of the treating provider, review under the standard time frame could, in the absence of immediate medical attention, result in any of the following:

(a) Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or her unborn child in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of a bodily organ or part.

(11) Requests for expedited external review, shall be forwarded by the insurer to the independent review entity within twenty-four (24) hours of receipt by the insurer.

(12) For expedited external review, a determination shall be made by the independent review entity within twenty-four (24) hours from the receipt of all information required from the insurer. An extension of up to twenty-four (24) hours may be allowed if the covered person and the insurer or its designee agree. The insurer or its designee shall provide notice to the independent review entity and to the covered person, by same-day communication, that the adverse determination has been assigned to an independent review entity for expedited review.

(13) External reviews which are not expedited shall be conducted by the independent review entity and a determination made within twenty-one (21) calendar days ***from the receipt of all information required from the insurer*** ~~[of receipt of the request for external review]~~. An extension of up to fourteen (14) calendar days may be allowed if the covered person and the insurer are in agreement.

Section 15. KRS 304.17A-627 is amended to read as follows:

(1) To be certified as an independent review entity under this chapter, an organization shall submit to the department an application on a form required by the department. The application shall include the following:

(a) The name of each stockholder or owner of more than five percent (5%) of any stock or options for an applicant;

(b) The name of any holder of bonds or notes of the applicant that exceeds one hundred thousand dollars ($100,000);

(c) The name and type of business of each corporation or other organization that the applicant controls or with which it is affiliated and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under paragraph (c) of this subsection and a description of any relationship the named individual has with an insurer as defined in KRS 304.17A-600 or a provider of health care services;

(e) The percentage of the applicant's revenues that are anticipated to be derived from independent reviews;

(f) A description of the minimum qualifications employed by the independent review entity to select health care professionals to perform external review, their areas of expertise, and the medical credentials of the health care professionals currently available to perform external reviews; and

(g) The procedures to be used by the independent review entity in making review determinations; and

(2) If at any time there is a material change in the information included in the application, provided for in subsection (1) of this section, the independent review entity shall submit updated information to the department.

(3)~~[The independent review entity shall annually submit to the department the information required by subsection (1) of this section in a form acceptable to the department.~~

~~(4)]~~ An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by an insurer or a trade or professional association of payors.

(4)~~[(5)]~~ An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by a trade or professional association of providers.

(5)~~[(6)]~~ Health care professionals who are acting as reviewers for the independent review entity shall hold in good standing a nonrestricted license in a state of the United States.

(6) ~~[(7)]~~ Health care professionals who are acting as reviewers for the independent review entity shall hold a current certification by a recognized American medical specialty board or other recognized health care professional boards in the area appropriate to the subject of the review, be a specialist in the treatment of the covered person's medical condition under review, and have actual clinical experience in that medical condition.

(7) ~~[(8)]~~ The independent review entity shall have a quality assurance mechanism to ensure the timeliness and quality of the review, the qualifications and independence of the physician reviewer, and the confidentiality of medical records and review material.

(8) ~~[(9)]~~ Neither the independent review entity nor any reviewers of the entity, shall have any material, professional, familial, or financial conflict of interest with any of the following:

(a) The insurer involved in the review;

(b) Any officer, director, or management employee of the insurer;

(c) The provider proposing the service or treatment or any associated independent practice association;

(d) The institution at which the service or treatment would be provided;

(e) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the covered person whose treatment is under review; or

(f) The covered person.

(9) ~~[(10)]~~ As used in this section, "conflict of interest" shall not be interpreted to include:

(a) A contract under which an academic medical center or other similar medical center provides health care services to covered persons, except for academic medical centers that may provide the service under review;

(b) Provider affiliations which are limited to staff privileges; or

(c) A specialist reviewer's relationship with an insurer as a contracting health care provider, except for a specialist reviewer proposing to provide the service under review.

(10) ~~[(11)]~~ On an annual basis, the independent review entity shall report to the department the following information:

(a) The number of independent review decisions in favor of covered persons;

(b) The number of independent review decisions in favor of insurers;

(c) The average turnaround time for an independent review decision;

(d) The number of cases in which the independent review entity did not reach a decision in the time specified in statute or administrative regulation; and

(e) The reasons for any delay.

Section 16. KRS 304.17A-700 is amended to read as follows:

As used in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.

(1) "Adjudicate" means an insurer pays, contests, or denies a clean claim;

(2) "Claims payment time frame" means the time period prescribed under KRS 304.17A-702 following receipt of a clean claim from a provider at the address published by the insurer, whether it is the address of the insurer or a delegated claims processor, within which an insurer is required to pay, contest, or deny a health care claim;

(3) "Clean claim" means a properly completed billing instrument, paper or electronic, including the required health claim attachments, submitted in the following applicable form.

(a) A clean claim from an institutional provider shall consist of:

1. The UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the NUBC;

2. Entries stated as mandatory by the NUBC; and

3. Any state-designated data requirements determined and approved by the Kentucky State Uniform Billing Committee and included in the UB-92 billing manual effective at the time of service.

(b) A clean claim for dentists shall consist of the form and data set approved by the American Dental Association.

(c) A clean claim for all other providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee.

(d) A clean claim for pharmacists shall consist of a universal claim form and data set approved by the National Council on Prescription Drug Programs;

(4) "Commissioner" means the commissioner of the Department of Insurance;

(5) "Covered person" means a person on whose behalf an insurer offering a health benefit plan is obligated to pay benefits or provide services;

(6) "Department" means the Department of Insurance;

(7) "Electronic" or "electronically" means electronic mail, computerized files, communications, or transmittals by way of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(8) "Health benefit plan" has the same meaning as provided in KRS 304.17A-005;

(9) "Health care provider" or "provider" means a provider licensed in Kentucky as defined in KRS 304.17A-005 and, for the purposes of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 only, shall include physical therapists licensed under KRS Chapter 327, psychologists licensed under KRS Chapter 319, and social workers licensed under KRS Chapter 335. Nothing contained in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 shall be construed to include physical therapists, psychologists, and social workers as a health care provider or provider under KRS 304.17A-005;

(10) "Health claim attachments" means medical information from a covered person's medical record required by the insurer containing medical information relating to the diagnosis, the treatment, or services rendered to the covered person and as may be required pursuant to KRS 304.17A-720;

(11) "Institutional provider" means a health care facility licensed under KRS Chapter 216B;

(12) "Insurer" has the same meaning provided in KRS 304.17A-005;

(13) "Kentucky Uniform Billing Committee (KUBC)" means the committee of health care providers, governmental payors, and commercial insurers established as a local arm of NUBC to implement the bill requirements of the NUBC and to prescribe any additional billing requirements unique to Kentucky insurers;

(14) "National Uniform Billing Committee (NUBC)" means the national committee of health care providers, governmental payors, and commercial insurers that develops the national uniform billing requirements for institutional providers as referenced in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.;

(15) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person; and

(16) "Utilization review" has the same meaning as provided in KRS 304.17A-600***(18)***~~[(17)]~~.

Section 17. The following KRS section is repealed:

304.17A-533 Prohibition against contract requiring mandatory use of hospitalist.

Section 18. Section 1 of this Act takes effect January 1, 2005.

Approved April 2, 2004

CHAPTER 60

(HB 116)

AN ACT relating to the Kentucky Independence Plus through Consumer-Directed Services Program Act of 2004.

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

SECTION 1. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act, unless the context otherwise requires:

(1) "Budget allowance" means the amount of money made available each month to a consumer to purchase covered services and supports. The amount of money shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer;

(2) "Consumer" means a person who has chosen to participate in the program, has met the enrollment requirements, has a person-centered plan, and has received an approved budget allowance;

(3) "Covered services and supports" means those services and supports that are eligible for reimbursement under the program and that are approved for the consumer following a functional needs assessment and pursuant to a person-centered plan;

(4) "Fiscal intermediary" means an entity that is approved by the cabinet to provide service that helps the consumer manage his or her budget allowance, retains the funds, processes any employment and tax information, reviews records to ensure correctness, writes paychecks to providers, and delivers paychecks or electronically transfers funds to the consumer for distribution to providers or caregivers;

(5) "Provider" means:

(a) A person or agency licensed or otherwise permitted to render services eligible for reimbursement under this program for whom the consumer is not the employer of record; or

(b) A consumer-employed caregiver that renders services eligible for reimbursement under this program for whom the consumer is the employer of record;

(6) "Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's budget allowance and needed services; and

(7) "Service advisor" means the person who provides technical assistance to a consumer in meeting responsibilities under Sections 1 to 3 of this Act.

SECTION 2. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

(1) The Cabinet for Health Services shall establish the Kentucky Independence Plus through Consumer-Directed Services Program that shall provide an option within each of the home and community-based services waivers. The option within each of the waiver programs shall be based on the principles of consumer choice and control and that shall be implemented upon federal approval, if required. The program shall allow enrolled persons to assist with the design of their programs and choose their providers of services and to direct the delivery of services to meet their needs.

(2) The cabinet shall establish interagency cooperative agreements with any state agency as needed to implement and administer the program.

(3) A person who is enrolled in a Medicaid home and community-based waiver program may choose to participate in the consumer-directed services program.

(4) A consumer shall be allocated a monthly budget allowance based on the results of his or her assessed functional needs, his or her person-centered plan, and the financial resources of the program. The budget allowance shall be disbursed directly from a cabinet-approved fiscal intermediary on behalf of the consumer. The cabinet shall develop purchasing guidelines to assist each consumer in using the budget allowance to purchase needed, cost-effective services.

(5) A consumer shall use the budget allowance to pay for nonresidential and nonmedical home and community-based services and supports that meet the consumer's needs and that constitute a cost-effective use of funds.

(6) A consumer shall be allowed to choose providers of services, including but not limited to when and how the services are provided. A provider may include a person otherwise known to the consumer, unless prohibited by federal law.

(7) If the consumer is the employer of record, the consumer's roles and responsibilities shall include but not be limited to the following:

(a) Developing a job description;

(b) Selecting providers and submitting information for any required background screening;

(c) With assistance of the cabinet or its agents, developing a person-centered plan and communicating needs, preferences, and expectations about services being purchased;

(d) Providing the fiscal intermediary with all information necessary for provider payments and tax requirements; and

(e) Ending the employment of an unsatisfactory provider.

(8) If a consumer is not the employer of record, the consumer's roles and responsibilities shall include but not be limited to the following:

(a) With assistance of the cabinet or its agents, developing a person-centered plan and communicating needs, preferences, and expectations about services being purchased;

(b) Ending the services of an unsatisfactory provider; and

(c) Providing the fiscal agent with all information necessary for provider payments and tax requirements.

(9) The roles and responsibilities of the cabinet or its agents shall include but not be limited to the following:

(a) Assessing each consumer's functional needs, helping with the development of a person-centered plan, and providing ongoing assistance with the plan;

(b) Offering the services of service advisors who shall provide training, technical assistance, and support to the consumer as prescribed through an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A;

(c) Approving fiscal intermediaries; and

(d) Establishing the minimum qualifications for all providers and being the final arbiter of the fitness of any individual to be a provider.

(10) The fiscal intermediary's roles and responsibilities shall include but not be limited to the following:

(a) Providing recordkeeping services, including but not limited to maintaining financial records as required through administrative regulation promulgated in accordance with KRS Chapter 13A by the Cabinet for Health Services; and

(b) Retaining the consumer-directed funds, processing employment and tax information, if any, reviewing records to ensure correctness, writing paychecks to providers, and delivering paychecks.

(11) (a) Each person who provides services or supports under this section shall comply on an annual basis with any required background screening. A person shall be excluded from employment upon failure to meet the background screening requirements unless otherwise exempted through an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.

(b) The service advisor shall, as appropriate, complete background screening as required by this section.

(12) For purposes of this section, a person who has undergone screening, is qualified for employment under this section, and has not been unemployed for more than one hundred eighty (180) days following the screening shall not be required to be rescreened. Such person must attest under penalty of perjury to not having been convicted of a disqualifying offense since completing the screening.

(13) To implement this section:

(a) The cabinet shall be authorized to promulgate necessary administrative regulations in accordance with KRS Chapter 13A; and

(b) The cabinet shall take all necessary action to ensure state compliance with federal regulations. The cabinet shall apply for any necessary federal waivers or federal waiver amendments to implement the program within three (3) months following the effective date of this Act pending availability of funding.

(14) The cabinet, with consumer input, shall review and assess the implementation of the consumer-directed program. By January 15 of each year, the cabinet shall submit a written report to the General Assembly that includes the review of the program and recommendations for improvements to the program.

SECTION 3. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of law to the contrary, the provisions of KRS Chapter 342 shall not apply to the provision of any service under Section 2 of this Act between the provider and the state or any state agency or political subdivision, the provider and the consumer, or as arranged by the provider and any fiscal intermediary, representative, or service advisor.

Section 4. Sections 1 to 3 of this Act shall be known as the Kentucky Independence Plus through Consumer-Directed Services Program Act of 2004.

Approved April 2, 2004

CHAPTER 61

(HB 199)

AN ACT relating to roads.

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

Section 1. KRS 178.010 is amended to read as follows:

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

(a) "Construction" includes reconstruction and improvement;

(b) "County roads" are public roads which have been ***formally*** accepted by the fiscal court of the county as a part of the county road system~~[after July 1, 1914]~~, or private roads, streets, or highways which have been acquired by the county pursuant to ***subsection (3) of this section or*** KRS 178.405 to 178.425. "County roads" includes necessary bridges, culverts, sluices, drains, ditches, waterways, embankments or retaining walls; and

(c) "Hard surface road" means a road the surface of which is asphalt, brick, stone block, macadam, concrete, gravel or other material of equal merit.

(2) Nothing in this chapter shall be construed to take from the jurisdiction or control of the legislative body of any incorporated city any road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of ***the***~~[such]~~ city.

(3) Nothing in this chapter shall prevent any fiscal court from acquiring ***unimproved*** land by gift for public purposes. ***However, on and after the effective date of this Act, a fiscal court may only accept a private road, street, or highway by gift if the private road, street, or highway has been constructed to meet minimum construction standards established by the fiscal court.***

(4) Nothing in this chapter, including the fact that a municipal street has not been accepted into the county road system, shall prevent any county from entering into an agreement, pursuant to the provisions of KRS 65.210 to 65.300, with any city located within the county to perform work upon or to provide personnel, materials or equipment for work to be performed upon any street located within the city. A county may pay one hundred percent (100%), or a lesser percentage, of all or any part of the cost of the joint undertaking, based upon the terms agreed to in the interlocal cooperative agreement required by this subsection.

Section 2. KRS 178.025 is amended to read as follows:

~~[(1)]~~Any road, street, highway or parcel of ground dedicated and laid off as a public way and used without restrictions ***on a continuous basis*** by the general public for ***fifteen (15)***~~[five (5)]~~ consecutive years, shall conclusively be presumed to be a public road.

~~[(2) In the absence of any record, the width of a public road right of way shall be presumed to extend to and include that area lying outside the shoulders and ditch lines and within any landmarks such as fences, fence posts, corner stones or other similar monuments indicating the boundary line.~~

~~(3) In the absence of both record or landmark, the right of way of a public road shall be deemed to extend to and include the shoulders and ditch lines adjacent to said road, and to the top of cuts or toe of fills where such exist.]~~

Section 3. KRS 178.040 is amended to read as follows:

(1) In order to change the width of a county road, the fiscal court***, an urban-county government,*** or a consolidated local government shall make a special order for a different width. The order shall be recorded in the office of the county clerk. In order to change the width of the right-of-way of a portion of a county through road system the fiscal court of a county containing a city of the first class or a consolidated local government may make a special order for a different width. The order shall be recorded in the office of the county road engineer.

(2) All county roads ***and all public roads that are being adopted into a county road system after the effective date of this Act***~~[hereafter established]~~ shall occupy a ***minimum*** right-of-way ***width of***~~[not less than]~~ thirty (30) feet***, fifteen (15) feet in each direction as measured from the centerline of the road, unless the fiscal court finds that a thirty (30) foot minimum cannot be met due to the topography of the road or other extraordinary circumstances. All county roads and all public roads that were in existence prior to the effective date of this Act shall not be required to occupy a minimum right-of-way width of thirty (30) feet under this subsection. A***~~[wide, but the]~~ fiscal court***, an urban-county government,*** or a consolidated local government may order ***the minimum right-of-way***~~[it]~~ to be a greater width. All roads added to the county through road system in a county containing a city of the first class or a consolidated local government in accordance with KRS 178.333 shall occupy a right-of-way width as ordered by the fiscal court or the consolidated local government.

(3) In acquiring a right-of-way for a county through road within any city, the fiscal court or the county court of a county containing a city of the first class or the consolidated local government may exercise any powers granted them by statute for the acquisition of property.

Section 4. KRS 178.070 is amended to read as follows:

The fiscal court may direct any county road to be discontinued. Notice must be published, according to the provisions of KRS 178.050, and in addition, notices must be placed at three (3) ***prominent and visible*** public places ***within one (1) mile***~~[in the vicinity]~~ of the road. After~~[the]~~ posting ***the***~~[of]~~ notices~~[as aforesaid]~~, the fiscal court shall appoint two (2) viewers who ***have no vested interest in the discontinuance of the road and who***, together with the county road engineer, shall view the road and report in writing at the hearing what inconvenience would result from the discontinuance. Upon ***presentation of the***~~[such]~~ report and other evidences, if any, ***at a public meeting of the fiscal court,*** the court may discontinue the road.

Section 5. KRS 178.080 is amended to read as follows:

(1) When any person desires the establishment or alteration of a public road, bridge or landing, he shall petition the fiscal court setting forth in his petition specifically the nature and location of the proposed work. The court shall thereupon appoint two (2) viewers who, together with the county road engineer, shall view the ground and report in writing the advantages and disadvantages which, in their opinion, will result to the individual and to the public from the proposed work and the grades and bearings of the proposed road, and other facts and circumstances that may enable the fiscal court to determine whether the work ought to be undertaken by the county.

(2) If the petition is for the establishment or alteration of a public road leading from a main public road, the report shall set out whether such road should be established, stating specifically whether it would be necessary to take any burying ground, garden, yard, orchard, or any part thereof, or to injure or destroy any buildings and the probable cost of the work, the names of the landowners whose property would have to be taken or injured, which of them would require compensation and the probable amount to which each would be entitled. They shall make careful examination of routes or locations other than that proposed or petitioned for, keeping in view the possible future development of the county and the accommodations of the general traveling public,

and shall report ***to the fiscal court at a public meeting*** in favor of the one they prefer, giving reasons for the preference. A map giving the grades and bearings of the routes or locations shall be returned with the report.

(3) If it appears to the fiscal court that the interests of the general public may be furthered thereby, the fiscal court shall personally examine the proposed work. If the court decides to undertake the proposed work the county judge/executive shall appoint a day for hearing the parties interested, and cause notices thereof to be given to all interested parties.

(4) If the county judge/executive at any time has sufficient evidence before him to enable him to ascertain what would be a just compensation to the proprietors and tenants, and if the proprietors and tenants are willing to accept what the county judge/executive deems just, the county judge/executive, upon such acceptance being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work, subject to the consent and approval of the fiscal court.

Section 6. KRS 178.100 is amended to read as follows:

From a decision of the fiscal court ordering a new road to be opened, or ordering an alteration or discontinuance of an existing road, or allowing gates to be erected across a road or abolishing existing gates, or a decision refusing any such order, the party aggrieved may bring an action in the Circuit Court ***of the county where the road is located*** to contest the decision of the fiscal court.

Section 7. KRS 178.115 is amended to read as follows:

(1) Whenever the fiscal court of any county deems it to be in the best interest of ***the***~~[such]~~ county to open, establish or alter the location of any public road, street, alley, ditch, culvert, bridge or similar public way or structure in ***the***~~[such]~~ county, ***the***~~[said]~~ fiscal court shall adopt a resolution setting forth the necessity for ***the***~~[such]~~ public road or structure, and thereupon ***the***~~[such]~~ public road or structure shall be deemed opened, established or altered, as the case may be, on behalf of the county. A certified copy of ***the***~~[said]~~ resolution~~[or order]~~ shall be posted at the courthouse door of the county within five (5) days after its adoption and a certified copy of ***the***~~[said]~~ resolution shall be posted by the county road engineer of the county along or at the proposed road or structure within five (5) days after its adoption.

(2) In all cases where~~[such]~~ public roads or structures have been established, any person or persons aggrieved thereby may prosecute an appeal from ***a***~~[such order or]~~ resolution of the fiscal court by filing a petition in equity in the Circuit Court of the county ***where the road or structure is located*** setting forth his grievance, to which petition shall be attached an attested or certified copy of ***the***~~[such order or]~~ resolution. ***The***~~[Such]~~ petition shall be filed within thirty-five (35) days from the date ***the***~~[such order or]~~ resolution was entered. ***An***~~[Such]~~ appeal shall be heard and decided by the court without the intervention of a jury. Any party so appealing shall execute and file a bond for costs at the time such appeal is taken. An appeal to the Court of Appeals may be taken in accordance with the Rules of Civil Procedure.

Section 8. KRS 178.117 is amended to read as follows:

(1) Any person or corporation, public or private, or any group of such persons or corporations or both, residing in or owning property adjacent to any publicly dedicated road in unincorporated territory in ***any***~~[a]~~ county ***and***~~[containing a city of the first class or consolidated local government]~~ desiring to make any improvements to the publicly dedicated road shall submit to the fiscal court***, the urban-county government,*** or the consolidated local government for approval plans and specifications for its improvements at their own expense. Any~~[such]~~ request for private improvement shall include all the information required by KRS 184.020 to accompany a request for the creation of a public road district pursuant to that section.

(2) The sponsors of the private improvement of the publicly dedicated road shall present their request, together with the attached maps and estimates of cost, to the fiscal court***, the urban-county government,*** or the consolidated local government, who shall turn over to the county engineer for his ***or her*** consideration the maps and estimates of cost. In considering whether to permit the requested improvement, the fiscal court, ***the urban-county government,*** or the consolidated local government, and the county engineer shall follow the same procedures provided for in KRS 184.040 and the same appellate rights provided for in these sections are available to the petitioners. When the county engineer receives from the fiscal court***, the urban-county government,*** or the consolidated local government an application for approval of plans or specifications for the private improvement of publicly dedicated roads by some individual or corporation, or a combination thereof, the county engineer shall be authorized and empowered to examine, inspect, and investigate, as seems to be

advisable, the sufficiency of the improvements which the application seeks to serve the purposes intended, and to establish and make reasonable charges for ***his or her***~~[such]~~ services on the basis of a schedule adjusted according to the services required to ***conduct the***~~[make such]~~ investigation or on any other reasonable method.

(3) When it appears to the county engineer that the completion of the improvement by or on behalf of any~~[such]~~ individual or corporation requires inspection and supervision in order to assure the protection of the public safety and the proper subsequent completion of ***the***~~[such]~~ work for the purposes intended, the county engineer shall include~~[such]~~ findings in his ***or her*** recommendation to the fiscal court***, the urban-county government,*** or the consolidated local government approving, modifying, or disapproving the particular plans and projects, and shall charge ***the***~~[such]~~ person or corporation for ***the***~~[such]~~ inspection and supervision on the basis of the actual cost of inspection plus a reasonable additional cost of supervision.

Section 9. KRS 178.405 is amended to read as follows:

When any private road, street, or highway~~[established prior to February 12, 1969,]~~ in an unincorporated area in ***any***~~[a]~~ county~~[containing a city of the first class or a consolidated local government, which area is not within the jurisdictional boundaries of a city of the second through sixth classes of cities,]~~ has been used by the general public openly, continuously, and notoriously for a period of at least fifteen (15) years, it shall be implied that such road, street, or highway may be dedicated to public use; Provided, that fifty-five percent (55%) of all property owners abutting the private road, street, or highway sign a petition stating that they are willing to dedicate the road, street, or highway to public use.

Section 10. KRS 178.415 is amended to read as follows:

When the fiscal court has made a determination in accordance with the provisions of KRS 178.410 that the road, street, or highway has been dedicated to public use, the county shall have a fee simple title to the part of the road, street, or highway which the plat, filed in the office of the county clerk, indicates as being for street purposes. However, if the road, street, or highway is dedicated in accordance with the provisions of KRS 178.405, and a plat does not exist, then the fiscal court shall establish a ***thirty (30)***~~[fifty (50)]~~ foot minimum width as a condition precedent to dedication to public use***, unless the fiscal court finds that a thirty (30) foot minimum cannot be met due to the topography of the road or other extraordinary circumstances***.

Section 11. The following KRS section is repealed:

178.155 Effect of lack of maintenance of road by county for fifteen years.

Approved April 7, 2004

CHAPTER 62

(HB 321)

AN ACT relating to the practice of dentistry.

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

Section 1. KRS 216.940 is amended to read as follows:

As used in KRS 216.940 to 216.945:

(1) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care ***or dentistry*** without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider"~~[only]~~ means those persons, agencies, clinics, or facilities ***providing***~~[engaging in]~~ primary ***medical*** care and performing no invasive or surgical procedures***, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313***.

(2) "Regularly practice" means to practice for more than sixty (60) days within any ninety (90) day period.

(3) "Sponsoring organization" means any organization, with an established relationship with a practicing entity, that organizes or arranges for the voluntary provision of health care services in the state.

Section 2. KRS 304.40-075 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care ***or dentistry*** without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider"~~[only]~~ means those persons, agencies, clinics, or facilities ***providing***~~[engaging in]~~ primary care medicine and performing no invasive or surgical procedures***, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313***;

(b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and

(c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.

(2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.

(3) (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services.

(b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:

1. Name and address of the charitable health care provider;

2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;

3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;

4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;

5. A copy of the registration filed with the Cabinet for Health Services under KRS 216.941; and

6. A copy of the medical malpractice policy, declaration page, and any other documentation the commissioner may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.

(c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.

(d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the department for transmittal to the general fund.

(4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance for the charitable health care services provided, and that meet the terms for eligibility established pursuant to this section.

(5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.

(6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.

(7) The Cabinet for Health Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.

(8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health Services under KRS 216.941.

Section 3. KRS 313.445 is amended to read as follows:

(1) No specialty license shall be issued unless the applicant presents proof satisfactory to the board that he will limit his practice to that specialty from date of receipt of such license. Upon the failure of a specialty licensee to limit his practice to the specialty in which he is licensed, the board shall recall his specialty license and revoke the privilege of announcing to the public that he is especially qualified in, or is limiting his practice to, such specialty. The specialty license and the privileges attached thereto shall be restored to the dentist when satisfactory proof has been presented that such dentist is limiting his practice to the specialty in which he was licensed.

(2) No provision in this chapter shall be construed as limiting or preventing a duly licensed and qualified dentist from performing, without a specialty license, dental acts or services to the public in any of the branches of dentistry set out in KRS 313.400.

(3) The provisions of subsection (1) of this section shall not apply to a dentist with a specialty license when providing services as a charitable health care provider under KRS 216.941.

(4) A dentist with a specialty license and a general dentist shall only perform those dental procedures that the dentist is competent to perform by education, training, and experience.

Approved April 7, 2004

CHAPTER 63

(HB 458)

AN ACT relating to local taxation.

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

Section 1. KRS 67.750 is amended to read as follows:

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

(1) "Business entity" means each separate 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;

(2) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:

(a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and

(b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;

(3) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal Revenue Code;

(4) "Employee" means ***any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an*** employee~~[as defined in Section 3401(c) of the Internal Revenue Code]~~;

(5) "Employer" means employer as defined in Section 3401(d) of the Internal Revenue Code;

(6) "Gross receipts" means all revenues or proceeds derived from ***the sale, lease, or rental***~~[sales]~~ of goods~~[or]~~ services***, or property*** by a business entity ***reduced by the following:***

(a) Sales and excise taxes paid; and

(b) Returns and allowances~~[with only a deduction allowed for sales and excise taxes and returns and allowances]~~;

(7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ***2003***~~[2002]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, ***2003***~~[2002]~~, that would otherwise terminate;

(8) "Net profit"~~[in case of a business entity]~~ means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:

(a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;

(b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;

(c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

(d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and

(e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution, or the Constitution and statutory laws of the United States;

(9) ***"Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;***

(10) "Tax district" means a city of the first to fifth class, county, urban-county, charter county,~~[or]~~ consolidated local government***, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes***;

(11)~~[(10)]~~ "Taxable gross receipts" in case of a business entity having payroll ***or sales revenues*** both within and without a tax district means gross receipts as defined in subsection (6) of this section,~~[and]~~ as apportioned under KRS 67.753;

(12)~~[(11)]~~ "Taxable gross receipts" in case of a business entity having payroll ***or sales revenue*** only in one (1) tax district means gross receipts as defined in subsection (6) of this section;

(13)~~[(12)]~~ "Taxable net profit" in case of a business entity having payroll ***or sales revenue*** only in one (1) tax district means net profit as defined in subsection (8) of this section;

(14)~~[(13)]~~ "Taxable net profit" in case of a business entity having payroll ***or sales revenue*** both within and without a tax district means net profit as defined in subsection (8) of this section,~~[and]~~ as apportioned under KRS 67.753; and

(15)~~[(14)]~~ "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

Section 2. KRS 67.753 is amended to read as follows:

(1) Except as provided~~[for]~~ in subsection ***(4)***~~[(2)]~~ of this section, net profit or gross receipts shall be apportioned ***as follows:***

(a) For business entities with both payroll and sales revenue in more than one (1) tax district,~~[to the tax district]~~ by multiplying the net profit or gross receipts by a fraction, the numerator of which is the payroll factor***, described in subsection (2) of this section,*** plus the sales factor***, described in subsection (3) of this section***, and the denominator of which is two (2)***; and***

(b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profits or gross receipts by the sales factor as set forth in subsection (3) of this section.

(2)~~[(a)]~~ The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the tax district during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the tax district based on the time the individual's service is performed within the tax district.

(3)~~[(b)1.]~~ The sales factor is a fraction, the numerator of which is the total sales ***revenue*** of the business entity in the tax district during the tax period, and the denominator of which is the total sales ***revenue*** of the business entity everywhere during the tax period.

(a)~~[2.]~~ ***The sale, lease, or rental***~~[Sales]~~ of tangible personal property ***is***~~[are]~~ in the tax district if:

1.~~[a.]~~ The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the tax district regardless of the f.o.b. point or other conditions of the sale; or

2.~~[b.]~~ The property is shipped from an office, store, warehouse, factory, or other place of storage in the tax district and the purchaser is the United States government.

(b)~~[3.]~~ Sales ***revenues***, other than ***revenue from the sale, lease, or rental***~~[sales]~~ of tangible personal property ***or the lease or rental of real property***, are apportioned to the tax district based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the tax district and the denominator of which is the total time spent performing that income-producing activity.

(c) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.

(4)~~[(2)]~~ If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the tax district, the business entity may petition the tax district or the tax district may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the tax district; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit or gross receipts.

Section 3. KRS 67.755 is amended to read as follows:

(1) Every business entity, other than a sole proprietorship, subject to ***a net profits, gross receipts, or occupational license tax levied by a tax district***~~[taxation under KRS 68.180, 68.197, 91.200, or 92.281,]~~ shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars ($5,000).

(2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:

(a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;

(b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or

(c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars ($20,000).

(3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of ***the*** quarterly payment required under subsection (2) of this section from the earlier of:

(a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section; or

(b) The due date of the annual return.

A fraction of a month is counted as an entire month.

(4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the tax district or any first taxable year in which a business entity's tax liability exceeds five thousand dollars ($5,000).

(5) The provisions of this section shall not apply unless adopted by the tax district.

Section 4. KRS 67.760 is amended to read as follows:

(1) ~~[As specified by KRS 67.750 to 67.790 and its application, the federal income tax law and its application, and the administrative and judicial interpretations of the federal income tax law,]~~For purposes of KRS 67.750 to 67.790 computations of gross income and deductions therefrom, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

(2) Every business entity subject to an occupational license tax governed by the provisions of KRS 67.750 to 67.790 shall keep records, render under oath statements, make returns, and comply with rules as the tax district from time to time may prescribe. Whenever the tax district ***deems***~~[judges]~~ it necessary, ***the tax district***~~[it]~~ may require a business entity, by notice served to the business entity, to make a return, render~~[under oath]~~ statements ***under oath***, or keep records, as the tax district deems sufficient to ***determine the tax liability of***~~[show whether or not]~~ the business entity~~[is liable for tax, and the extent of the liability]~~.

(3) The tax district ***may require***, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity,~~[may require]~~ the attendance of a representative of the business entity or of any other person having knowledge in the premises.

Section 5. KRS 67.770 is amended to read as follows:

(1) A tax district may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service ***or is agreed to by the tax district and the business entity***, for filing its return, if the business entity, on or before the date prescribed for payment of the tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business entity shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the tax district. A fraction of a month is counted as an entire month.

Section 6. KRS 67.778 is amended to read as follows:

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of ***any tax subject to the provisions of***~~[the tax levied by]~~ KRS 67.750 to 67.790.

(2) Any tax collected pursuant to the provisions of KRS 67.750 to 67.790 may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the tax district, whichever is the later, except that:

(a) In any case where the assessment period contained in KRS 67.775 has been extended by an agreement between the business entity and the tax district, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Exclusive authority to refund or credit overpayments of taxes collected ***by a tax district*** ~~[pursuant to KRS 67.083, 68.180, 68.197, 91.200, and 92.281]~~ is vested in ***that*** ~~[the]~~ tax district.

Section 7. KRS 67.780 is amended to read as follows:

Every employer making payment of compensation ***to an employee*** shall deduct and withhold upon the ***payment of the*** compensation ***any tax imposed against the compensation by a tax district. Amounts withheld shall be paid to the levying tax district*** ~~[a tax determined under KRS 67.083, 68.180, 68.197, 91.200, or 92.281 and pay]~~ in accordance with KRS 67.783. A tax district may impose minimum and maximum tax liabilities for the tax on compensation.

Section 8. KRS 67.788 is amended to read as follows:

(1) Where there has been an overpayment of tax under KRS 67.780, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under KRS 67.780 by the employer.

(2) Unless written application for refund or credit is received by the tax district from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.

(3) An employee who has compensation attributable to activities ***performed*** outside a tax district, based on time spent outside the tax district, ~~[but]~~ whose employer has withheld and remitted the occupational license fee on the compensation ***attributable to activities performed outside the tax district to the*** ~~[to another]~~ tax district, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the tax district may confirm with the employer the percentage of time spent ***outside the tax district*** and the amount of compensation ***attributable to*** ~~[for]~~ activities ***performed*** outside the tax district prior to approval of the refund.

Section 9. KRS 67.790 is amended to read as follows:

(1) A business entity subject to tax on gross receipts or net profits ***may be subject to*** ~~[shall pay]~~ a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:

(a) ***Fails to file*** ~~[Files]~~ any return or report ***on or before*** ~~[after]~~ the due date prescribed for filing or ~~[the due date]~~ as extended by the tax district ~~[, unless it is shown to the satisfaction of tax district that the failure to file is due to reasonable cause]~~; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for ***payment*** ~~[filing]~~.

The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars ($25).

(2) Every employer who fails to file a return or pay the tax on or before the ***date*** ~~[time]~~ prescribed under KRS 67.783 ***may be subject to*** ~~[shall pay]~~ a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars ($25).

(3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the tax district. A fraction of a month is counted as an entire month.

(4) Every tax ***subject to the provisions of***~~[imposed by]~~ KRS 67.750 to 67.790, and all increases, interest, and penalties thereon, shall become, from the time ***the tax***~~[it]~~ is due and payable, a personal debt ***of the taxpayer*** to the tax district~~[from the business entity or other person liable therefor]~~.

(5) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return**,**~~[or]~~ willfully makes a false return, or~~[who]~~ willfully fails to pay taxes owing or collected, with ***the*** intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under KRS 67.750 to 67.790 of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the tax district and required to be filed with the tax district by the provisions of KRS 67.750 to 67.790, or by the rules of the tax district or by written request for information to the business entity by the tax district.

(8) ***(a)*** No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax laws or in any action challenging a tax district tax laws.

(b) Any person who violates the provisions of paragraph (a) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars ($500) or imprisoned for not longer than six (6) months, or both.

(c) Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both.

Section 10. KRS 67.795 is amended to read as follows:

The provisions of KRS 67.750 to 67.790 shall apply on and after January 1, 2006, to all tax districts that levy an occupational license fee or a tax on net profits or gross receipts***, except that the provisions of KRS 67.750 to 67.790 shall not apply to the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614***~~[imposed under KRS 67.083, 68.180, 68.197, 91.200, and 92.281, or any other statutory provision]~~. ***A***~~[However, a]~~ tax district may apply the provisions of KRS 67.750 to 67.790 to the levy of an occupational license fee or a tax on net profits or gross receipts***, except the utilities gross receipts tax levied by school districts pursuant to KRS 160.613 and 160.614,***~~[imposed under KRS 67.083, 68.180, 68.197, 91.200, and 92.281 or any other statutory provision]~~ by adoption of an ordinance prior to January 1, 2006.

Approved April 7, 2004

CHAPTER 64

(HB 569)

AN ACT authorizing the payment of certain claims against the state which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, making an appropriation therefore, and declaring an emergency.

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

Section 1. (1) There is appropriated out of the general fund in the State Treasury for the purpose of compensating persons and companies named below for claims which have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, the amounts listed below:

Frankfort/Franklin County Community Education	
Thornhill Education Center	
700 Leslie Avenue	
Frankfort, Kentucky 40601	$2,636.00
Boyle County Schools	
352 North Danville Bypass	
Danville, Kentucky 40422	$72,759.00
Floyd County Board of Education	
Office of the Superintendent	
106 North Front Avenue	
Prestonsburg, Kentucky 41653	$57,618.35
BellSouth	
P.O. Box 70807	
Charlotte, North Carolina 28272-0807	$68.13
BellSouth	
P.O. Box 70529	
Charlotte, North Carolina 28272-0529	$335.74
Midland Communication Packaging, Inc.	
P.O. Box 99575	
Louisville, Kentucky 40269-0575	$2,188.75
Myers and Stauffer	
420 Nichols Road	
Kansas City, Missouri 54112	$135,000.00
Douglas Electronics Company, Inc.	
650 Baxter Avenue	
Louisville, Kentucky 40204	$10,489.47
Weber and Rose, PSC	
Attention: Darryl W. Durham	
400 West Market Street, Suite 2400	
Louisville, Kentucky 40202-3364	$40,394.34
Mallinckrodt, Inc.	
c/o Lloyd and McDaniel, PLC	
P.O. Box 23200	
Louisville, Kentucky 40223-0200	$10,000.08
Grants - Receivables	

University of Louisville Research Foundation	
223 Service Complex	
Louisville, Kentucky 40292	$15,500.00
Covington and Burling	
P.O. Box 7566	
Washington, District of Columbia 20044-7566	$93,666.93
Harrodsburg Independent Schools	
371 East Lexington Street	
Harrodsburg, Kentucky 40330	$8,333.33
Chasteen Enterprises	
300 Chestnut Street	
Berea, Kentucky 40403	$4,995.00
Roger Elliot	
P.O. Box 790	
Liberty, Kentucky 42539	$4,561.20
Corman and Associates, Inc.	
881 Floyd Drive	
Lexington, Kentucky 40505	$27,224.04
American Guidance Service, Inc.	
P.O. Box 86, SDS 12-1429	
Minneapolis, Minnesota 55486-1429	$5,000.00
Hometown Chevron	
P.O. Box 384	
Manchester, Kentucky 40962	$42.41
Charles W. Ritchie	
811 McDonald's Ferry Road	
Frankfort, Kentucky 40601	$811.73
Herb Ray	
791 Avenstoke Road	
Waddy, Kentucky 40076	$2,749.50
Social Security Administration	
330 West Broadway, Room 205	
Frankfort, Kentucky 40601	$210.09
BellSouth	
P.O. Box 70807	
Charlotte, North Carolina 28272-0807	$515.35
USA Signs, LLC	
196 Westridge Drive	

Danville, Kentucky 40422	$3,900.00
The Hogan Company	
5018 East Robertson Road	
Cross Plains, Tennessee 37049	$6,062.80
Terminix	
1001 Park Central Avenue	
Nicholasville, Kentucky 40356-9117	$365.00
Easy Picker Golf Products	
415 Leonard Boulevard	
Lehigh, Florida 33971	$7,659.98
Fabricut	
P.O. Box 470490	
Tulsa, Oklahoma 74147-0490	$7,249.29
West Payment Center	
P.O. Box 6292	
Carol Stream, Illinois 60197-6292	$2,746.21
Gateway Press, Inc.	
1118 Solutions Center	
Chicago, Illinois 60677-1001	$3,578.00

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or their personal representatives, and the firms listed, but not presented for payment within five (5) years from the date of issuance of the checks as required by KRS 41.370 and 413.120.

	Payee	Treasury Fee	Total Check
Check #G1,120,694 dated January 8, 1986	$51.94	$25.00	$26.94
Check #G1,120,707 dated January 8, 1986	$25.97	$25.00	$0.97
Check #G1,120,715 dated January 8, 1986	$64.92	$25.00	$39.92
Check #G1,286,862 dated March 25, 1986	$39.50	$25.00	$14.50
Check #G1,286,912 dated March 25, 1986	$26.33	$25.00	$1.33
Check #G1,286,927 dated March 25, 1986	$78.99	$25.00	$53.99
Check #G1,424,044 dated June 2, 1986	$56.43	$25.00	$31.43
Maxine V. Johnson			
6809 Euclid Avenue			
Cincinnati, Ohio 45243 (total):	$344.08	$175.00	$169.08
Check #G2,539,757 dated August 14, 1987	$421.00	$25.00	$396.00
Check #G2,683,759 dated October 13, 1987	$1,046.00	$25.00	$1,021.00
Signal Boards, Inc.			
2400 Millers Lane			
Louisville, Kentucky 40216-5389 (total):	$1,467.00	$50.00	$1,417.00
Check #T9328969 dated July 1, 1992			

Daniel B. Sherwood			
1300 Golf Club Lane, Apartment 3			
Cincinnati, Ohio 45245	$85.36	$25.00	$60.36
Check #T1526860 dated June 13, 1994			
Cheryl L. Mikovich			
214 Landreth Court			
Durham, North Carolina 27713	$95.00	$25.00	$70.00
Check #T1548813 dated June 16, 1994			
Deborah Wesley			
c/o Ronald R. and Betty R. Wesley			
3345 Fir Tree Lane			
Erlanger, Kentucky 41018	$115.00	$25.00	$90.00
Check #T1633558 dated June 24, 1994			
Charles D. Wood			
50 Apple Lane			
Somerset, Kentucky 42501	$202.00	$25.00	$177.00
Check #E0970953 dated April 4, 1995			
Mary Virginia Taylor			
c/o Margaret Mason Engelhart			
499 Southwest 15th Drive			
Boca Raton, Florida 33432	$1,576.49	$25.00	$1,551.49
Check #L0977653 dated October 10, 1995			
Dereck Hess			
1738 Grapevine Road			
Phyllis, Kentucky 41554	$133.10	$25.00	$108.10
Check #T3670720 dated June 6, 1996			
Heath J. Aldrich			
290 Hillington Drive			
Paducah, Kentucky 42001-5994	$280.00	$25.00	$255.00
Check #CS2659627 dated October 8, 1996			
Rena Baker			
c/o Diane Darnell, CHFS			
730 Schenkel Lane			
Frankfort, Kentucky 40601	$120.00	$25.00	$95.00
Check #T4012305 dated February 27, 1997			
William D. and Roxanna St. John			
10850 Taylor Mill Road			
Independence, Kentucky 41051-7508	$275.00	$25.00	$250.00

Check #T4612993 dated May 12, 1997			
William E. Crowe			
152 Westland Lane			
Cynthiana, Kentucky 41031	$60.63	$25.00	$35.63
Check #E1,320,376 dated August 14, 1997			
Estate of Mary E. Humphrey			
c/o Whitlow and Scott, Attorneys at Law			
P.O. Box 389			
Elizabethtown, Kentucky 42702-0389	$184.00	$25.00	$159.00
Check #BT0063838 dated September 22, 1997			
Georgia R. Hill			
c/o Bob Hill			
1202 Half Mile Way			
Greenville, South Carolina 29609	$343.79	$25.00	$318.79
Check #BT0070235 dated September 22, 1997			
Estate of Sylva Zeidler			
c/o Strauss and Troy			
50 East Rivercenter Boulevard, Suite 1400			
Covington, Kentucky 41011	$981.42	$25.00	$956.42
Check #G13350913 dated October 6, 1997			
Ralph P. Lecompte			
c/o Wendi Beswick, KHEAA			
P.O. Box 798			
Frankfort, Kentucky 40602-0798	$289.32	$25.00	$264.32
Check #CS4,030,829 dated January 15, 1998	$41.00	$25.00	$16.00
Check #CS4,136,195 dated February 2, 1998	$65.00	$25.00	$40.00
Katrina L. Cord			
488 Beechwood Drive			
Maysville, Kentucky 41056 (total):	$106.00	$50.00	$56.00
Check #BT0117931 dated January 29, 1998			
Donald W. and Michele Norton			
6621 31st Place, Northwest			
Washington, District of Columbia 20015	$844.65	$25.00	$819.65
Check #E1,346,803 dated February 18, 1998			
Mary L. Gorman (Deceased)			
c/o Ann Hogan			
2196 16th Avenue			
San Francisco, California 94116	$480.00	$25.00	$455.00

Check #T5450917 dated April 13, 1998			
Christopher and Shawna Allison			
235 Ridgeland Drive			
Mayfield, Kentucky 42066	$177.00	$25.00	$152.00
Check #T5801120 dated May 27, 1998			
Peggy Byrd			
2470 West Main Street			
Williamsburg, Kentucky 40769	$103.00	$25.00	$78.00
Check #TR0829543 dated July 10, 1998			
Department of Highways			
c/o Sharon Cummings, Payroll Branch			
State Office Building, Mail Code 81			
Frankfort, Kentucky 40622	$819.30	$25.00	$794.30

Section 2. Whereas the persons and companies named above have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received the same, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 2004

CHAPTER 65

(HB 577)

AN ACT relating to coalbed methane development and making an appropriation therefor.

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

SECTION 1. KRS CHAPTER 349 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby declares:

(a) The venting of coalbed methane and degasification of coal seams is approved by the Commonwealth for the purpose of ensuring the safe recovery of coal;

(b) The positive economic impact of coal mining to the Commonwealth is currently greater than that of coalbed methane production;

(c) Coalbed methane is not found in conventional gas reservoirs;

(d) Any development of coalbed methane should be undertaken in a way to protect and preserve the environment and protect and preserve the coal for future safe mining and the maximum recovery of coal;

(e) Commercial recovery and marketing of coalbed methane should be facilitated whenever appropriate to meet the energy needs of both the Commonwealth and the United States;

(f) The extraction of methane from mineable coal enhances mine safety, promotes environmental goals and objectives, and conserves an important energy resource; and

(g) The Energy Policy Act of 1992 was enacted, in part, to encourage coalbed methane development and the Commonwealth should enact legislation to carry out the purpose of that Act.

(2) Therefore, in order to encourage and ensure the fullest practical safe recovery of both coal and coalbed methane, consistent with the above declarations and findings, this chapter is established to:

(a) Authorize coalbed methane well permits;

(b) Regulate the design of coalbed methane wells and recovery techniques;

(c) Authorize coalbed methane well drilling units and pooling interests therein;

(d) Establish field rules; and

(e) Provide a process to enable coalbed methane well operators and coalbed methane owners to proceed with the orderly development and production of coalbed methane pending the judicial resolution of issues relating to coalbed methane ownership.

(3) Notwithstanding subsections (1) and (2) of this section, the General Assembly expressly finds that establishing an orderly process to permit and produce coalbed methane shall in no way be construed to create an inference or presumption as to the ownership of coalbed methane in any judicial or administrative proceeding, or be construed to or be used or interpreted to apply to any well otherwise permitted, approved, or regulated under KRS Chapter 353, except for any wells that are to be permitted, converted to, or operated as coalbed methane wells.

(4) It is hereby declared to be the public policy of this Commonwealth and in the public interest to:

(a) Safeguard, preserve, and protect coal seams for safe mining; facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state; and maintain the ability and right of coal operators at all times to vent coalbed methane from mine areas for the safe recovery of coal;

(b) Foster, encourage, and promote the commercial development of the Commonwealth's coalbed methane by establishing procedures for issuing permits and forming drilling units for coalbed methane wells without adversely affecting the safety of mining or the mineability of coal seams;

(c) Safeguard, protect, and enforce the correlative rights of coalbed methane operators and coalbed methane owners in a pool of coalbed methane so that each operator and owner may obtain his or her just and equitable share of production from coalbed methane;

(d) Create a state permitting procedure and authority to provide for and facilitate coalbed methane development as encouraged by the Energy Policy Act of 1992; and

(e) Seek the deletion of the Commonwealth of Kentucky from the list of affected states by the Secretary of the United States Department of Interior as provided for in the Energy Policy Act of 1992.

SECTION 2. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

(1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;

(2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(r) and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;

(3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;

(4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;

(5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;

(6) "Commissioner" means the commissioner of the Department of Natural Resources;

(7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;

(8) "Department" means the Department of Natural Resources;

(9) "Director" means the director of oil and gas conservation as established in KRS 353.530;

(10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;

(11) "DSMRE" means the Department for Surface Mining Reclamation and Enforcement as established in KRS 350.035;

(12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;

(13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;

(14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;

(15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;

(16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(r);

(17) "Mine permittee" means the permittee as defined in KRS 350.010(21);

(18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;

(19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;

(20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;

(21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;

(22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;

(23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;

(24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

(25) "Plat" means a map, drawing, or print showing the location of a well;

(26) "Review board" means the Coalbed Methane Well Review Board;

(27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;

(28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;

(29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;

(30) "Unit" means any tract or tracts which the department has determined are underlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;

(31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;

(32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;

(33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;

(34) "Venting" means the act of releasing coalbed methane to the atmosphere;

(35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and

(36) "Workable coalbed" means:

(a) Any coalbed twenty-four (24) inches or more in thickness;

(b) Any coalbed actually being operated commercially;

(c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or

(d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

SECTION 3. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Before a permit may be issued by the department to drill a coalbed methane well on any tract known to be underlaid with coal-bearing strata, the well operator shall provide to the department a plat prepared by a licensed, professional land surveyor and a licensed, professional engineer showing:

(a) The county in which the coalbed methane well drill site is located;

(b) The name of the surface owner of the drill site tract, the acreage of the drill site tract, the names of the surface owners of adjacent tracts, the names of all coal interest holders from the surface to fifty (50) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located, and the names of all oil and gas owners from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located;

(c) The proposed or actual location of the coalbed methane well determined by bearing and distance, relative to two (2) permanent points or monuments that appear on the applicable United States Geological Survey seven and one-half (7-1/2) minute topographic quadrangle map;

(d) The location of any other existing or permitted coalbed methane well or any oil or gas well located within one thousand five hundred (1,500) feet of the well;

(e) The outside boundary of the mineral tract from which the coalbed methane is to be produced if within seven hundred fifty (750) feet of the well; and

(f) The number to be given the coalbed methane well, the earliest date for commencement of drilling, the earliest date for commencement of any stimulation of the coalbed methane well, and if horizontal drilling of a coalbed methane well is proposed, the vertical and horizontal alignment and extent of the coalbed methane well.

(2) If the location of any coalbed methane well proposed to be drilled, deepened, or reopened is known to be underlaid by a coal bearing stratum which is not within the area of an existing mining permit or the proposed permitted area of a pending application or permit modification for a mine before the DSMRE, simultaneously with the filing of an application for a permit, the applicant shall send, by registered or certified mail, a copy of the required plat to the record coal owner or owners and record coal lessee or lessees from the surface to fifty (50) feet below the deepest penetration of the coalbed methane well on the tract on which the well is proposed to be located.

(3) If the coal bearing stratum is within the area of an existing mining permit or the proposed permitted area of a pending application or permit modification for a mine before the DSMRE, a copy of the required plat shall also be sent by the applicant, by registered or certified mail, to each mine licensee and mine permittee operating any stratum as designated on the current license issued by the department and at the address stated thereon.

(4) A copy of the required plat shall also be sent, by registered or certified mail, simultaneously with the filing of an application for a permit, to the surface owner of the drill site tract and surface owners of adjoining tracts.

(5) If the address of any record owner is unknown to the applicant and cannot upon diligent inquiry within the county be ascertained, or if there are more than five (5) record owners, then the applicant shall file with the department an affidavit that either condition exists, and the department may prescribe some different method of notifying the record owner in lieu of sending a copy of the plat and notice of application as required by this section.

(6) The plat shall be filed and become a permanent record, subject to inspection at any time by any interested person. Any executive officer, process agent, or chief engineer of the mine licensee or mine permittee may be considered a mine licensee or mine permittee for the purposes of mailing the required copy of the plat.

(7) If a coalbed methane well is proposed to be drilled, deepened, converted, or reopened by an applicant who is not the owner or lessee of all of the oil and gas interests, the applicant shall, simultaneously with the filing of the application for a permit, send by registered or certified mail a copy of the required plat to the record oil and gas lessees of, to the record oil and gas lessors of, and to the operator of all oil and gas wells producing from, all formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the well is proposed to be located.

(8) The operator shall promptly upon completion of either a vertically drilled coalbed methane well located ten (10) feet or more from the location reflected on the plat required with the permit application or a horizontally drilled coalbed methane well file with the department an as-drilled plat prepared by a licensed professional land surveyor and a licensed professional engineer reflecting the actual coalbed methane well location. If the operator has completed a horizontally drilled coalbed methane well, the as-drilled plat shall show its alignment and extent. The plat shall become a permanent record subject to inspection at any time by any interested persons.

(9) Each plat, or exhibit attached thereto, shall have the following information on a form supplied by the department:

(a) Notice of the application for a coalbed methane well and the address where a copy of the application may be obtained;

(b) A statement that the recipient has twenty (20) days within which to file an objection to the proposed coalbed methane well, its location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed; and

(c) A statement that the applicant has met and conferred with, or offered to meet and confer with, each coal interest holder concerning the proposed coalbed methane well, its location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed.

SECTION 4. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) If the drilling of a coalbed methane well could adversely affect the present or future use or operation of a workable coalbed, any coal interest holder may object to a proposed coalbed methane well, the well's location, the proposed stimulation in the workable coalbed, or the proposed completion in the workable coalbed. Any coal interest holder, within twenty (20) days of receipt of the plat by him or her and by the

department, may file specific objections in writing with the department. The filed objections shall provide sufficient detail for the applicant to identify the nature and substance of the objection. The department shall notify the applicant of the objections and fix a time and place for a hearing before the review board to be conducted in accordance with KRS Chapter 13B and this chapter.

(2) If any coal interest holder, notified pursuant to Section 3 of this Act, or any other person, claims to have a valid real property interest in, or the current legal right to produce, coalbed methane, the person claiming the real property interest or right shall notify the applicant and the department, in writing, within twenty (20) days from the receipt of the plat by him or her and by the department. The person also shall request that a pooling order be entered pursuant to subsection (1) of Section 16 of this Act.

(3) If the record oil and gas lessor, lessee, or well operator notified pursuant to Section 3 of this Act, or any other person, claims to have a valid real property interest in, or the current legal right to produce, coalbed methane, the person claiming the real property interest or right shall notify the applicant and the department, in writing, within twenty (20) days from the receipt of the plat by him. The person shall request that a pooling order be entered pursuant to subsection (1) of Section 16 of this Act.

(4) If no objections are filed within the twenty (20) day period, the department shall immediately issue a drilling permit to the well operator approving the location of the well and authorizing the well operator to proceed to drill at that location, provided all other preconditions to issuance of a permit, as contained in this chapter, have been met.

(5) Upon receipt of an application to drill a coalbed methane well, the department shall provide a copy of the required plat and permit application to DSMRE. Within fifteen (15) days of receipt by DSMRE notification shall be sent to the department by DSMRE as to whether the proposed coalbed methane well will be located within the boundaries of any coal mine for which a permit has been issued or has been applied for pursuant to KRS Chapter 350. If the proposed coalbed methane well is to penetrate a workable coalbed that is within the area of an existing permit for an underground mine issued by DSMRE, or the proposed permitted area of a pending application or permit modification for an underground mine before DSMRE, the written authorization of the mine permittee shall be required prior to issuance by the department of a permit to stimulate, complete, or horizontally drill the coalbed methane well in the workable coalbed that is within the area of an existing permit for an underground mine issued by DSMRE or within the proposed permitted area of a pending application or permit modification for an underground mine before DSMRE. If the proposed coalbed methane well is to be located within a surface area permitted, or proposed in a pending application or permit modification to be issued by DSMRE, the written authorization of the mine permittee shall be required prior to issuance by the department of a permit to drill the coalbed methane well. In the absence of the written authorization of the mine permittee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well if:

(a) Authorization has been denied by the mine permittee; and

(b) The proposed location and area to be disturbed by the proposed coalbed methane well has achieved either a partial bond release status or the bond for the area has been forfeited.

SECTION 5. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Prior to the abandonment of a coalbed methane well drilled through a workable coalbed, the well operator shall notify, by certified mail, return receipt requested, or by registered mail, all the coal interest holders of the workable coalbed and the department of the operator's intention to plug and abandon the well. The notice shall give the number of the well and its location, and fix the time at which the work of plugging and filling will be commenced. The time shall not be less than fifteen (15) days after the day on which the notice was received, or in due course should be received, by the department. The department shall prescribe the form of notice to be used. A representative of any coal interest holder, at his or her own expense and liability, and of the department may be present at the plugging and filling of the well. Regardless of whether representatives appear, the well operator may proceed, at the time fixed, to plug and fill the well. When the well is plugged and filled, an affidavit setting forth the time and manner in which the well was plugged shall be made in triplicate by two (2) persons experienced in plugging and filling wells who participated in the work. The affidavit shall be made on forms furnished by the department. One (1) copy of the affidavit shall be retained by the well operator, one (1) provided to each coal interest holder, and one (1) provided to the department.

(2) In addition to the notification required under subsection (1) of this section, prior to the abandonment of a coalbed methane well the operator shall submit a plugging plan which is subject to approval by the

department. The proposed plugging plan shall be designed to allow coal mining to occur through the well after the well is plugged.

(3) If a coalbed methane well ceases to produce in paying quantities and no dewatering operations are being conducted for a period of fifteen (15) consecutive months, any coal interest holder or any record oil or gas lessor or lessee of any tract being penetrated by the coalbed methane well, may file a request for hearing pursuant to Section 12 of this Act, to determine whether the well has been abandoned and should be plugged in accordance with this section. However, nothing in this subsection shall require the plugging and abandonment of a coalbed methane well that is being temporarily shut in by the coalbed methane well operator. Simultaneously with the filing of a request for a hearing with the department, the person requesting the hearing shall send a copy of the request to the coalbed methane well operator.

(4) Any coal interest holder shall have the following rights with respect to a coalbed methane well to be plugged and abandoned:

(a) To convert the coalbed methane well to a vent hole or otherwise take the coalbed methane well. In this event the department, upon determination that the coal interest holder has placed the coalbed methane well under a mining permit, shall release the coalbed methane well operator's bond and the coalbed methane well operator shall be relieved of further responsibility for the coalbed methane well; and

(b) To file an objection concerning the proposed manner or method of plugging with the department, within fifteen (15) days after receipt of notice of intent to plug. The department shall consider any objection and may issue an order specifying the manner and method of plugging and reclamation consistent with this section.

(5) All coalbed methane wells shall be plugged and abandoned in accordance with this section. The department shall promulgate regulations specifying the manner and method of plugging vertical and horizontal coalbed methane wells and in so doing, or in entering any order for such plugging and abandonment, shall give consideration to the ability to mine any affected coal seam safely and the protection of any affected coal seam for future mining.

SECTION 6. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) If a coalbed methane well is permitted and drilled within the boundaries of any coal mine for which a permit has been issued or an application for a mine permit or a mine permit modification or amendment has been filed but not issued pursuant to KRS Chapter 350, the mine licensee shall have the right to mine through that coalbed methane well and the associated drilling unit in accordance with the provisions of this subsection.

(a) At least one hundred twenty (120) days prior to mining through a coalbed methane well and associated drilling unit, the mine licensee shall notify the review board and operator of its intention to mine through the property. The notice shall be made on a form prescribed by the review board, and shall include a plat showing the location of the drilling unit, the coalbed methane well and associated surface equipment, facilities, infrastructure, and improvements, and the geographic extent of the mining operations to be conducted within the drilling unit. The mine licensee shall also submit an estimated schedule for commencing and completing mining operations within the drilling unit. After a hearing the review board shall promptly issue a written determination on whether the continued operation of the coalbed methane well will impede, interfere with, or present a possible safety hazard to the mine licensee's planned mining operations. If the review board determines that the coalbed methane well will impede, interfere with, or present a safety hazard to the planned mining operations, concurrently an order shall be issued to the operators, with a copy to the mine licensee, directing the temporary or permanent plugging of the well at the operator's cost and such other action as may be appropriate in the circumstances. Following the issuance of the order, the review board shall promptly issue a mine through certificate to the mine licensee, with a copy to the operator, authorizing the mine licensee to mine-through the coalbed methane well and associated drilling unit.

(b) The mine licensee and all other coal interest holders having interests in the coalbed within the drilling unit shall have no duty or obligation to compensate or pay the operator or other interested coalbed methane parties for any causes of action, claims, or damages arising from the suspension or loss of coalbed methane production or the plugging and abandonment of a coalbed methane well

and the removal or relocation of any associated facilities, infrastructure, and improvements due to mining through the coalbed methane well and associated drilling unit pursuant to this subsection.

(2) If a mine licensee files an application for a coal mine permit or seeks to modify or amend an existing coal mine permit so as to include a geographical area containing one (1) or more existing coalbed methane wells or any well sites for which drilling permits have been issued or are pending, the mine licensee shall have the right to mine through those coalbed methane wells or into or through a coalbed methane well and the associated drilling units and any well sites for which permits to drill have been issued or applications for permits to drill have been filed but not issued in accordance with the provisions of this subsection.

(a) At least one hundred eighty (180) days prior to mining into or through one (1) or more drilling units or permitted well sites operated by a common operator, the mine licensee shall notify the review board and the operator of its intention to mine into or through the property. The notice shall be made on a form prescribed by the review board and shall include a plat showing the location of the drilling unit, the coalbed methane well and associated surface equipment, facilities, infrastructure, and improvements, and the geographic extent of the mining operations to be conducted within the drilling unit. The mine licensee shall also submit an estimated schedule for commencing and completing mining operations within the drilling unit.

(b) Within thirty (30) days after receiving the mine licensee's notice pursuant to paragraph (a) of this subsection, the mine licensee and operator shall enter into a confidentiality agreement on a form prescribed by the review board and the operator shall provide, to the extent available, copies of all data and information necessary and appropriate to enable the mine licensee to determine the current value of each drilling unit, well site, and any associated assets described in the mine licensee's notice in accordance with the criteria set forth in paragraph (e) of this subsection. The information shall be in a form prescribed by the review board and shall include, among other things, data, reports, and information relating to current coalbed methane reserve calculations, well completions, historic production and sales results, capital and operating costs, all actual land, legal permitting, survey, title, and any other costs and expenses directly relating to the acquisition, permitting, development, and operation of each drilling unit and well site, and estimated well plugging and abandonment costs of any existing coalbed methane wells. In addition, the operator shall provide the review board and mine licensee with copies of all agreements and leases, payment division orders and any pooling agreements or pooling orders for each drilling unit and well site, together with a schedule setting forth the name, address, and working interest and net revenue percentages, royalties and overriding royalties, and all other interests and rights of all other interested coalbed methane parties. If the information is not timely filed or is incomplete, the mine licensee may seek an order from the review board directing the operator to comply with the provisions of this subsection.

(c) Within thirty (30) days after receiving the information described in paragraph (b) of this subsection, the mine licensee and operator shall meet and confer at a mutually agreed upon date, time, and place for the purpose of attempting to conclude a mutually acceptable agreement as to the compensation due to the operator for any damage, impairment, or loss to each drilling unit, well site, and any associated assets described in the information provided by the operator resulting from the mine licensee's planned mine-through operations. Any compensation agreement between the mine licensee and operator for each drilling unit or well site shall be approved and executed by all other interested coalbed methane parties. The mine licensee and operator shall jointly notify the review board that a compensation agreement has been entered into between the parties and request that the review board issue a mine-through certificate for each drilling unit and well site described in the notice. The notice shall include any terms and conditions set forth in the compensation agreement that the parties have agreed to incorporate in the applicable mine-through certificates. Upon receipt of the executed compensation agreement, the review board shall promptly issue the requested mine-through certificates to the mine licensee, with copies to the operator and all other interested coalbed methane parties. If the parties are unable to reach an agreement, within ten (10) days following the expiration of the thirty (30) day meet and confer period, either party may request a hearing before the review board for the purpose of determining the compensation due the operator and any terms and conditions to be imposed upon the mine licensee's proposed mining operations. Copies of the hearing request shall be sent to all other interested coalbed methane parties.

(d) Within fifteen (15) days of receiving the hearing request, the review board shall schedule a hearing to take place within sixty (60) days and shall notify the mine licensee, the operator and all other interested coalbed methane parties of the date, time, and location of the hearing. At its election, the

review board may engage a qualified petroleum engineer for the purpose of conducting an independent evaluation of the compensation to be paid to the operator and all other interested coalbed methane parties in accordance with paragraph (e) of this subsection. The mine licensee and the operator shall each pay one-half (1/2) of the costs and expenses for the petroleum engineer retained by the review board.

(e) The review board shall determine the value of each drilling unit, well site, and all associated assets before and after the mine licensee's planned mine-through operations. In determining the amount of compensation due the operator and all other interested coalbed methane parties, the review board must consider all relevant evidence and information submitted and the review board shall base its decision solely upon the following criteria and procedures:

1. Except as otherwise expressly provided in this subsection, all coalbed methane reserve estimates and the valuation of reserves and other assets damaged, impaired, or lost due to the planned mining operations shall be consistent with standard oil and gas industry accounting, engineering, and reserve practices and shall be performed pursuant to the then-current applicable laws, regulations, policies, and guidelines for determining gas reserves for public reporting companies in the United States.

2. At the hearing, the mine licensee and operator, on behalf of itself and all other interested coalbed methane parties, shall appear and submit evidence and testimony as to the value of the subject drilling units, well sites, and any associated assets before and after the mine licensee's planned mining operations. The review board shall only consider coalbed methane reserve estimates or valuation determinations made in conformity with subparagraph 1. of this paragraph by a professional petroleum engineer with experience in evaluating coalbed methane reserves and operations. All reserve estimates and any valuation analysis prepared by the mine licensee and operator for use in the review board's hearing shall be effective thirty (30) days prior to the date of the hearing. The reserve estimates and valuation analysis shall be exchanged between the mine licensee and operator and copies of the information shall be provided to the review board and all other interested coalbed methane parties no less than twenty-one (21) days prior to the hearing date. Any coalbed methane reserve estimates or valuation analysis prepared at the review board's request shall be set forth in a written report. Copies of the report prepared for the review board shall be provided to the mine licensee, the operator, and all other interested coalbed methane parties no less than ten (10) days prior to the review board's hearing date.

3. All estimates of remaining recoverable coalbed methane reserves immediately before and immediately after the planned mining operations shall consist of proved developed producing or proved developed nonproducing reserves as determined pursuant to this subsection. A drilling unit shall have proved developed producing reserves if the unit has an operating coalbed methane well, which is completed in one (1) or more target coal seams and is producing commercial quantities of coalbed methane. The drilling units total proved developed producing reserves before and after the planned mining operations shall be calculated based on the completed coal seams within the unit well. A drilling unit shall have proved developed nonproducing reserves if the unit has a coalbed methane well which is completed in one (1) or more target coal seams and is fully operational and all associated infrastructure such as power, gas gathering, and water management systems required to produce and sell coalbed methane in commercial quantities has been constructed, but the well is not producing coalbed methane in commercial quantities because it either is in the dewatering stage or is not operating due to factors beyond the operator's control. Whether a drilling unit contains proved developed producing reserves or proved developed nonproducing reserves shall be determined based on the status of the coalbed methane well and associated infrastructure sixty (60) days prior to the review board's hearing date.

4. The net present value of proved developed producing reserves projected immediately before and immediately after the planned mining operations shall be calculated using a discount rate of twelve percent (12%). The net present value of proved developed nonproducing reserves projected immediately before and immediately after the planned mining operations shall be calculated using a discount rate of twenty percent (20%). The valuation analysis shall also

project the net present value of all revenues received, if any, by the operator during the period in which the planned mining operations are to be conducted.

5. In determining the compensation due the operator and all other interested coalbed methane parties for delayed or lost production, if the total projected production of the coalbed methane well is reduced so as not to yield a commercially reasonable return on investment to the operator, but the well is still able to produce coalbed methane in commercial quantities, the projected difference in the net present value of the recoverable reserves before and after mining shall be included as part of the compensation due the operator and all other interested coalbed methane parties.

6. In determining the value of the coalbed methane reserves impaired or lost due to the planned mining operations, except as expressly provided herein, no consideration shall be given to undeveloped coalbed methane resources in coal seams which have not been completed in the subject coalbed methane well or which are in coal seams below the total depth of the well bore. If, however, a coal seam in the same field is producing coalbed methane but the coal seam is not completed in the subject coalbed methane well, the operator may submit evidence to the review board for its consideration as to the potential net present value of the resources within the uncompleted seam, but in no event shall the net present value of those resources be discounted at less than thirty percent (30%).

7. Except as otherwise provided herein, in determining the value of coalbed methane for purposes of this subsection, the gas price shall be the last published price in the gas market closest to the drilling unit sixty (60) days prior to the review board's hearing date. If the coalbed methane is sold pursuant to a gas sales agreement or marketing contract in which the gas price is determined based on a published price, subject to any contractual adjustment, in the gas market other than the market closest to the drilling unit, the gas price shall be determined based on the last published price in a gas market referred to in the gas sales agreement or marketing contract, subject to any contractual adjustment set forth therein, sixty (60) days prior to the review board's hearing date. If the coalbed methane is sold pursuant to an arms-length firm or fixed price gas sales agreement or marketing contract, the actual sales price received by operator for gas sold sixty (60) days prior to the review board's hearing date shall be used as the gas price in the coalbed methane valuation.

8. All capital, operating, and production costs used in the net present value determinations made pursuant to this subsection shall be based on the operator's then current reasonable and verifiable actual costs and expenses. Copies of all relevant and available cost information shall be provided by the operator to the review board and mine licensee as provided in paragraph (b) of this subsection. If actual cost information is not otherwise available, all calculations shall be made using reasonable and customary costs for comparable coalbed methane operations in the Commonwealth and in the surrounding states.

9. If the planned mining operations will mine through a coalbed methane well or require the removal, relocation, or suspension of operation of other facilities, infrastructure, or improvements in a drilling unit, the operator and any other interested coalbed methane parties shall be reimbursed for all reasonable actual and direct costs, damages, and expenses to be incurred due to these mining operations; provided, however, that in no event shall any replacement costs and expenses exceed the operator's or any other interested coalbed methane parties' actual costs and expenses for the affected well, facilities, infrastructure, and improvements, as the case may be. The operator and any other interested coalbed methane parties shall not be reimbursed for any general, administrative, or overhead costs and expenses or any other costs and expenses not otherwise allocated to the costs of the subject drilling unit, coalbed methane well and the associated facilities, infrastructure, and improvements. Any amounts due the operator and any other interested coalbed methane parties shall be reduced by the projected then-current market value of such equipment, facilities, and improvements to the extent that it can be salvaged and sold or used in other operations.

10. If, prior to drilling a coalbed methane well, the mine licensee submits a plan to mine into or through any part of the associated drilling unit or well site for which a drilling permit has been issued or is pending, the operator shall not proceed with drilling a coalbed methane well

pending a final decision by the review board with respect to the mine licensee's request for a mine-through certificate. When a mine-through certificate is issued to the mine licensee, the operator and all other interested coalbed methane parties shall be reimbursed for all reasonable costs and verifiable actual land, legal, permitting, surveying, and technical costs and expenses incurred to acquire or lease and maintain the property and obtain any permits, approvals, and other agreements required to drill the coalbed methane well. The operator and all other interested coalbed methane parties shall not be reimbursed for any general, administrative, or overhead costs and expenses or any other costs and expenses not otherwise allocated to the costs to acquire or lease the subject property or permit the coalbed methane well.

(f) At a hearing, the review board shall take testimony and evidence from the mine licensee and operator, on behalf of itself and all other interested coalbed methane parties consistent with the provisions in this subsection. Within fifteen (15) days following the hearing, the review board shall issue a written decision to the mine licensee and operator determining the compensation due the operator and each of the other interested coalbed methane parties in the amount of the difference between the value of each drilling unit, well site, and any associated assets before and after the mine licensee's planned mining operations. If the review board determines that the mine licensee's proposed mining operations will result in a loss or taking of all of either the coalbed methane reserves in the coal seam to be mined and all coalbed methane reserves in completed coal seams in the coalbed methane well below the mined coal seam as provided in paragraph (e)5. of this subsection or the entire drilling unit, the operator and other interested coalbed methane parties shall be awarded the full value of the property and assets prior to the proposed mining operations as determined by the review board. The review board's decision shall list the compensation amounts to be paid to the operator and each of the other interested coalbed methane parties for each drilling unit, well site, and any associated assets. The decision shall also set forth any duties or obligations to be performed by the parties, such as the temporary or permanent plugging of any well or the relocation or removal of any surface facilities, to enable the mine licensee to proceed immediately with the planned mining operations.

(g) Within fifteen (15) days of receiving the review board's decision, the mine licensee shall notify the review board and the operator and all other interested coalbed methane parties of its decision to:

1. Accept the review board's decision with respect to one (1) or more of the drilling units, well sites, and associated assets and deposit the compensation awarded to the operator and each of the other interested coalbed methane parties for the property;

2. Appeal all or part of the review board's decision as provided in paragraph (j) of this subsection; or

3. Withdraw notice of intent to mine into any of the subject coalbed methane property and assets. If the mine licensee elects to withdraw notice of intent to mine into or through all of the drilling units, well sites, and any associated assets which were the subject of the review board hearing, upon receiving a statement of costs from the operator, the mine licensee shall promptly reimburse the operator for all reasonable out-of-pocket engineering and legal costs and expenses incurred to prepare for and participate in the review board hearing and shall have no further obligations to the operator or any of the other interested coalbed methane parties.

(h) Within fifteen (15) days of receiving the review board's decision, the operator, on behalf of itself and other interested coalbed methane parties, shall notify the review board and the mine licensee whether it will accept the amounts awarded by the review board or file an appeal with the Circuit Court in the county where the drilling unit or well site is located challenging the review board's valuation of any of the property or assets.

(i) If no appeal of the review board's decision is filed by the parties, upon receipt of the compensation due the operator and all other interested coalbed methane parties for each drilling unit and well site selected by the mine licensee for which a mine-through certificate will be issued, the review board shall promptly deliver the awarded compensation to the operator and all other interested coalbed methane parties for the drilling unit and well site and concurrently issue the appropriate mine-through certificate to the mine licensee, with copies to the operator and all other interested coalbed

methane parties. If the operator and other interested coalbed methane parties are awarded either the total net present value of the coalbed methane reserves in coal seams to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below such coal seam as provided in subparagraph 5. of paragraph (e)5. of this subsection or the total value of the entire drilling unit and associated assets, upon payment of the compensation, the operator and other interested coalbed methane parties shall simultaneously, if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interests in such property and assets, as the case may be, within the drilling unit on a form to be prescribed by the review board. The review board shall take whatever other action that may be deemed appropriate or necessary in the circumstances.

(j) If either party notifies the review board of a decision to appeal the review board's valuation of any of the subject coalbed methane properties and assets to the Circuit Court, the mine licensee shall deposit with the review board the compensation due the operator and each of the other interested coalbed methane parties for each drilling unit, well site and any associated assets selected by the mine licensee for which a mine-through certificate will be issued. Upon receipt of the funds from the mine licensee, the review board shall promptly deliver to the operator and the other interested coalbed methane parties one hundred percent (100%) of the awarded compensation for any drilling unit, well site and any associated assets not listed in any notice of appeal and seventy-five percent (75%) of the awarded compensation to the operator and other interested coalbed methane parties for any drilling unit, well site, and any associated assets for which an appeal is to be filed. Concurrently with delivering the awarded compensation to the operator as provided herein, the review board shall issue to the mine licensee, with copies to the operator and all other interested coalbed methane parties, a mine-through certificate for each drilling unit and well site for which compensation has been received. If the review board's decision with respect to any drilling unit is not appealed and the operator and other interested coalbed methane parties are awarded either the total net present value of the coalbed methane reserves in the coal seam to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below that coal seam as provided in paragraph (e)5. of this subsection or the total value of each drilling unit, well site, and any associated assets, upon payment of the compensation, the operator and other interested coalbed methane parties shall simultaneously if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interests in that property and assets, as the case may be, within the drilling unit or well site on a form to be prescribed by the review board. The review board shall take whatever other action that may be deemed appropriate or necessary in the circumstances to carry out its decision. All funds deposited with the review board shall be placed in an interest-bearing account pending a final resolution of any appeals.

(k) Within thirty (30) days following the issuance of the review board's decision, the mine licensee or the operator, on behalf of itself and any other interested coalbed methane parties, may file a petition in the Circuit Court of the county in which the drilling unit or well site is located or in the Franklin County Circuit Court disputing the review board's valuation of all or any part of any coalbed methane properties or assets pursuant to this subsection. The parties filing the petition shall name as parties to the action the following: the review board, the mine licensee, all other coal interest holders, the operator, and all other interested coalbed methane parties. Promptly upon receiving notice of the petition, the review board shall deliver any remaining funds deposited by the mine licensee as provided in paragraph (j) of this subsection, together with all interest accrued thereon, to the clerk of the Circuit Court for the county in which the petition is filed and these funds shall be deposited in an interest bearing account pending a decision on the petition. The decision of the Circuit Court shall be made in accordance with the provisions of Section 18 of this Act. If the Circuit Court determines the operator and other interested coalbed methane parties are entitled to greater compensation than the amount awarded by the review board, the mine licensee shall pay the difference to the clerk of the Circuit Court within fifteen (15) days of the court's decision. Upon receipt of the additional funds awarded by the Circuit Court, the clerk shall promptly deliver to the operator and any other interested coalbed methane parties these funds together with all interest accrued thereon. If the Circuit Court determines that the operator is entitled to less compensation than the amount awarded by the review board, the amount of the reduction shall be refunded to the mine licensee together with any interest that accrued thereon. If the escrowed funds are not sufficient to fully reimburse the mine licensee, the operator and all other interested coalbed methane parties having an interest in the

subject coalbed methane properties and assets shall promptly pay the mine licensee for the difference between the escrowed funds and the total amount to be reimbursed pursuant to the Circuit Court's order. If the Circuit Court determines that the operator and other interested coalbed methane parties are to receive either the total net present value of the coalbed methane reserves in the coal seam to be mined by the mine licensee and all coalbed methane reserves in coal seams completed in a coalbed methane well below such coal seam as provided in paragraph (e)5. of this subsection or the total value of the entire drilling unit, well site, and any associated assets, which values may be increased or decreased by the Circuit Court, upon receipt of the awarded compensation, the operator and other interested coalbed methane parties shall simultaneously if requested by the mine licensee, assign and transfer free and clear of all encumbrances to the mine licensee all of their respective rights, title, and interest in such property and assets, as the case may be, within the drilling unit on a form to be prescribed by the review board.

(l) Subject to obtaining a decision by the Circuit Court with respect to any appeals initiated pursuant to paragraph (k) of this subsection, the operator and all of the other interested coalbed methane parties' acceptance of the compensation awarded by the review board and of the performance of any duties and obligations by the mine licensee as ordered by the review board shall constitute full and complete consideration to the operator and all of the other interested coalbed methane parties for any and all causes of action, claims, damages, or losses to each drilling unit or any portion thereof, well site, or any associated assets caused by the mine licensee, or any other coal interest holder's subsequent mining operations. The mine licensee shall be liable for any and all injuries, deaths, or damages proximately caused by the mine licensee on, in, or with respect to that property.

(3) If, after the mine licensee files a notice of intention to mine into or through any coalbed methane properties or assets pursuant to subsection (1) or (2) of this section, the mine licensee's coal mining permit or any pending amendment to an existing permit issued pursuant to KRS Chapter 350 is withdrawn, canceled, delayed, or modified so as to exclude all or any part of the geographic area covering any drilling unit or well site described in the mine licensee's notice, the mine licensee shall promptly advise the review board and operator that it is amending its request for a mine-through certificate to exclude any property that is no longer subject to a coal mine permit or a pending coal mine permit application.

SECTION 7. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) This chapter shall apply to all lands located in the Commonwealth however owned including lands owned or administered by any government or any agency or political subdivision thereof, over which the Commonwealth has jurisdiction under its police power.

(2) The waste of coalbed methane is hereby prohibited. The waste prohibited includes physical waste as that term is generally understood in the oil, gas, and coalbed methane industry, giving consideration to coal mining operations and the safe recovery of coal and includes:

(a) The locating, drilling, equipping, operating, or producing of any coalbed methane well or wells drilled, deepened, or reopened in a manner that causes or tends to cause a reduction in the quantity of coalbed methane ultimately recoverable from a pool under prudent and proper operations, or contrary to any provision of, or any order, rule or administrative regulation promulgated or issued under this chapter;

(b) Permitting the migration of coalbed methane from the stratum in which it is found into other strata, thereby ultimately resulting in the loss of recoverable coalbed methane;

(c) The drowning with water of any stratum or part thereof capable of producing coalbed methane in paying quantities, except for secondary recovery purposes, or in hydraulic fracturing or other completion practices;

(d) The unlawful damage to underground, fresh, or mineral water supply, coalbeds, or other mineral deposits in the operations for the discovery, development, production, or handling of coalbed methane;

(e) The unnecessary or excessive loss of coalbed methane by spillage or venting or destruction of coalbed methane or its constituents; and

(f) The drilling of more wells than are reasonably required to recover efficiently the maximum amount of coalbed methane from a pool.

(3) For purposes of this chapter, waste does not include coalbed methane vented or released from any mine area, the degasification of a coal seam for the safe recovery of coal, the plugging of coalbed methane wells for the safe recovery of coal, or the conversion of coalbed methane wells to vent holes for the safe recovery of coal.

(4) The sale or use of coalbed methane from any coalbed methane well unless a permit has been issued as required by Section 8 of this Act, or in violation of the spacing provisions of Section 15 of this Act, shall be prohibited.

(5) No person shall conduct coalbed methane operations unless that person has first obtained the necessary permits, including surface discharge and underground injection control permits, as appropriate for the particular operation to be conducted. The department shall notify state and federal agencies with jurisdiction over the protection of surface waters and groundwater when permit applications are filed and shall, to the extent possible, coordinate permit review.

SECTION 8. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) It is unlawful for any person to drill, commence, operate, deepen, convert, or stimulate any coalbed methane well, to conduct any horizontal drilling of a coalbed methane well or to convert any existing oil or natural gas well to a coalbed methane well, without first securing from the department a permit pursuant to this chapter. Before any well, borehole, or facility initially used for a coal mining related purpose, such as a vent hole, is converted for the purpose of recovering coalbed methane for sale or use, the operator shall obtain a permit and comply with the provisions of this chapter prior to the time that the well, borehole, or facility is converted or used for the purpose of recovering coalbed methane for sale or use. It is unlawful for any person to drill, deepen, convert, or reopen a coalbed methane well for the production of oil or natural gas or for the injection of water, gas, or other fluids into any oil or natural gas producing formation until the person has obtained a permit from the department for a petroleum or natural gas well pursuant to KRS 353.570. However, no additional permit fee shall be required if the original permit for the coalbed methane well has not expired.

(2) Every permit application filed under this section shall be verified and shall contain the following:

(a) A statement that the applicant claims to have a valid real property interest in, or the current legal right to produce coalbed methane from a person claiming a valid real property interest in, the coalbed methane. The statement shall identify with specificity the nature of the real property interest and the document or instrument evidencing that interest or right, including recording information of any recorded document or instrument;

(b) The names and addresses of the coalbed methane well operator and every person or entity whom the applicant must notify under any section of this chapter;

(c) The name and address of each coal interest holder of any workable coalbed which is to be penetrated by a proposed coalbed methane well or within seven hundred fifty (750) horizontal feet or fifty (50) vertical feet of any portion of the proposed coalbed methane well;

(d) The name and addresses of each record oil and gas lessee of, the record oil and gas lessor of, and the operator of all oil and gas formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the coalbed methane well is proposed to be located;

(e) The coalbed methane well name or such other identification as the department may require;

(f) The approximate depth to which the coalbed methane well is to be drilled, deepened, or converted, the coal seams including the depth and thickness of each seam that will be completed for production, and any other coal seams which will be penetrated by the coalbed methane well;

(g) A description of any means to be used to stimulate any of the workable coalbeds penetrated by the coalbed methane well;

(h) If the proposed coalbed methane well will require casing or tubing, the entire casing program for the coalbed methane well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each string is to be cemented;

(i) If the proposed operation is to convert an existing petroleum or natural gas well, as defined in KRS 353.010(13), or to convert a vertical borehole or facility initially used for a coal mining related

purpose, such as a vent hole, to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(j) Except for a vent hole proposed to be converted to a coalbed methane well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the coalbed methane well which will protect all workable coalbeds which will be penetrated by the coalbed methane well;

(k) If the proposed operations will include horizontal drilling of a coalbed methane well, a description of the operations, including both the vertical and horizontal alignment and extent of the coalbed methane well from the surface to total depth; and

(l) Other information as the department may require consistent with this chapter.

(3) Each application for a coalbed methane well permit shall be accompanied by the following:

(a) A permit application fee of three hundred dollars ($300);

(b) A bond in an amount prescribed in Section 24 of this Act;

(c) A certificate that the applicant's notice requirements of Section 3 of this Act have been satisfied. Certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;

(d) If the proposed coalbed methane well will be located within one-half (1/2) of a mile, measuring horizontally, of a water supply well being used for residential or domestic purposes, the applicant will submit the groundwater protection plan required under KRS 224.70-110 and applicable administrative regulations promulgated pursuant thereto for review by the department, or demonstrate to the department that a plan is not required; and

(e) Proof that the applicant has public liability insurance coverage in an amount not less than five hundred thousand dollars ($500,000) in aggregate and three hundred thousand dollars ($300,000) per occurrence for damages to persons and property caused by the applicant's operations or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations which shall be promulgated by the department.

(4) Prior to the department's issuance of a permit to drill a coalbed methane well, a copy of the written authorization from the mine licensee shall be filed with the application under the following circumstances:

(a) If the proposed coalbed methane well is to penetrate a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the DSMRE and if the applicant plans to stimulate, complete, or horizontally drill the coalbed methane well in a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before DSMRE;

(b) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit, or the proposed permitted area of a permit pending before DSMRE for which no bond release has been obtained; or

(c) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit by DSMRE for which a partial bond release has been obtained.

If a coalbed methane well permit is issued for a well site located within the boundaries of any coal mine for which a permit has been issued or is pending pursuant to KRS Chapter 350, the permit shall include a provision specifically stating that the permitted coalbed methane well location is in an area for which a coal mine permit has been issued or is pending pursuant to KRS Chapter 350 and is subject to the mine-through rights set forth in subsection (1) of Section 6 of this Act.

(5) If a partial bond release for the surface area on which the proposed coalbed methane well is located has been obtained from DSMRE and the applicant is denied written authorization from the mine licensee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well. When requesting an appeal, the applicant shall submit a verified statement including the following:

(a) The applicant has met and conferred with or offered to meet and confer with the mine licensee concerning the authorization;

(b) The mine licensee has refused to provide written authorization to disturb the permitted area;

(c) The physical area to be disturbed by the proposed well location and the use of area, including ingress and egress thereto, qualifies as a commercial or industrial postmining land use entitling the mine licensee to a complete bond release for the area to be disturbed by the coalbed methane well operator in accordance with KRS Chapter 350; and

(d) The applicant has agreed to pay the reasonable and actual costs of the permit revision required by DSMRE to affect the incremental bond release for the proposed area to be disturbed by the coalbed methane well operator, not to exceed five thousand dollars ($5,000).

(6) Prior to the issuance of a permit to drill a coalbed methane well, the applicant shall grant assignable subsidence waivers to any mine licensee if requested in an objection filed pursuant to Section 12 of this Act and, if required, to allow present or future mining with planned subsidence under KRS Chapter 350. However, this subsection and any subsidence waivers shall in no way waive, affect, or impair the ability of the applicant or the applicant's successors or assigns to pursue any remedies for damages to persons, or to improved or tangible property, suffered or incurred as a result of any subsidence caused by the mine licensee or the mine licensee's successors or assigns. The mine licensee, its successors or assigns, shall be liable for any and all damages to persons or to improved or tangible property proximately caused by the mine licensee.

(7) If the mine licensee is mining in a coal seam that is not being produced by the coalbed methane well operator and has not exercised his or her mine-through rights, as set forth in subsection (1) or (2) of Section 6 of this Act, in any coal mine before removing any coal or other material or driving any entry or passageway within five hundred (500) horizontal feet of the vertical segment of a coalbed methane well or within fifty (50) vertical feet of the horizontal segment of a coalbed methane well, the mine licensee shall forward simultaneously to the well operator and to the department, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date. Maps or plans shall show the mine workings and projected mine workings within five hundred (500) horizontal feet of the coalbed methane well. However, the issuance of any coalbed methane well permit shall not preclude or prevent coal mining outside two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of a coalbed methane well or outside of the workable coalbed in which the horizontal segment of a coalbed methane well is located, unless specified by the department for reasons of mine or well safety. The mine licensee shall not mine within fifty (50) feet of the vertical segment of a coalbed methane well without the written authorization of the coalbed methane well operator. A mine licensee may file a request with the department to mine closer than two hundred (200) feet of the vertical segment of the coalbed methane well. The mine licensee shall forward simultaneously to the well operator and the department, by certified mail, return receipt requested, or by registered mail, a request to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, which shall be accompanied by the following:

(a) A copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine plan workings and projected mine workings beneath the tract of land and within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well; and

(b) A statement that the applicant has met and conferred with, or offered to met and confer with, the well operator concerning the mine licensee's plan to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well.

The well operator may, within twenty (20) days of receipt of the documents listed in paragraphs (a) and (b) of this subsection, file specific objections in writing with the department. When objections are filed, the department shall provide a copy of the objections to the mine licensee and fix a time and place for an informal hearing. The hearing shall be held not more than ten (10) days from the end of the twenty (20) day period. At the hearing, the mine licensee and the well operator, in person or by representative, shall consider the objections and seek agreement on the character and the extent of operations to be conducted within less than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well. If no agreement can be reached, the department, after administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is

necessary to be left for the safe protection, use, and operation of the well. The department's decision shall be subject to appeal by either party as provided in this chapter. The department shall keep a complete record of all hearings. The mine licensee shall, every six (6) months, while mining within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, file up-to-date maps and plans required by this section, or file new maps and plans complete to date.

(8) The department may deny the issuance of a permit if it determines that the applicant has a documented pattern or practice of substantial violations of the provisions of this chapter and has failed to abate or seek review of the violations. If the department finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, the department may suspend the permit. After a suspension, the operator shall forthwith cease all work being conducted under the permit until the department reinstates the permit. The department shall make a written finding of its determination and may enforce the determination in Circuit Court pursuant to Section 29 of this Act.

SECTION 9. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) When two (2) or more separately owned tracts, or portions thereof, are embraced within a drilling unit, or when there are separately owned interests in all or part of any such drilling unit, the operators or owners of coalbed methane owning the interests may pool their interests for the development and operation of the drilling unit by voluntary agreement. These agreements may be based on the exercise of pooling rights or rights to establish units which are granted in any gas or oil lease, coal lease, coalbed methane lease, or similar instrument.

(2) No voluntary pooling agreement between or among coalbed methane operators or owners shall be held to violate the statutory or common law of the Commonwealth which prohibits monopolies or acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

SECTION 10. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) If any coal interest holder has objected to the proposed stimulation pursuant to subsection (1) of Section 4 of this Act, no permit shall be issued to stimulate a coalbed methane well unless the applicant has obtained and filed with the department an agreement between the coal interest holders of any workable coalbed within five hundred (500) horizontal feet of the proposed coalbed methane well to be stimulated and within the five hundred (500) foot horizontal radius and feet fifty (50) vertical feet above or below the workable coalbed proposed to be stimulated.

(2) The requirement for an agreement to stimulate in this section shall not be construed to impair, abridge, or affect any contractual rights or obligations arising out of a contract, lease, deed, or similar agreement which provides for the development of coalbed methane and stimulation of workable coalbeds between the applicant and the coal interest holder. The existence of any such contract, lease, deed, or similar document shall constitute a waiver of the requirement to file an agreement to stimulate with the department.

(3) An agreement to stimulate shall provide:

(a) That the coal interest holder has been provided with a copy of the permit application to drill a coalbed methane well and a copy of all plats and documents which may accompany the application; and

(b) That the coal interest holder agrees to the stimulation of the workable coalbed as described in the application.

(4) Subject to subsection (5) of Section 4 of this Act, in the absence of the applicant submitting the agreement to stimulate as described herein, the applicant may submit a request for a hearing before the review board accompanied by an affidavit, or verified statement, which shall include the following:

(a) A statement that the coal interest holder has refused to sign a written agreement to stimulate the workable coalbed;

(b) A statement detailing the efforts undertaken to obtain the signed agreement to stimulate; and

(c) A statement that the proposed method of stimulation does not involve the use of explosives and will not have a significant adverse affect on the mineability of the workable coalbed, or impair mine safety.

(5) The failure to obtain an agreement to stimulate shall in no way create an inference or presumption that the method of stimulation proposed by the applicant will harm the workable coalbed.

(6) Upon receipt of a request for a hearing and an affidavit, or verified statement, as set forth in this section, the department shall forward the application to the review board to consider the proposed stimulation, or if other objections or requests are filed requiring a hearing before the review board, the request may be included for consideration by the review board along with other matters related to the permit application.

(7) Any well operator that stimulates a workable coalbed without an agreement to stimulate from the coal interest holder shall be liable in tort without proof of negligence for any damages proximately caused by the stimulation to the workable coalbed, or any other workable coalbed within five hundred (500) horizontal feet of the coalbed methane well stimulated or within the five hundred (500) foot horizontal radius and fifty (50) vertical feet above or below the workable coalbed stimulated and for damages to any mining equipment proximately caused by the stimulation. The well operator shall be liable for injury, death, or damage to property proximately caused by the stimulation.

SECTION 11. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The Coalbed Methane Well Review Board is hereby established. The review board shall be composed of five (5) members and shall have the powers and duties specified under this chapter.

(2) The review board shall consist of the commissioner of the Department of Natural Resources or his or her designee within the department, the commissioner of the Department of Mines and Minerals, and the director of the Division of Oil and Gas within the Department of Mines and Minerals, a representative of the oil and gas industry, and a representative of the coal industry. The representatives from the oil and gas industry and the coal industry shall be appointed by the Governor for terms of four (4) years subject to confirmation by the Senate.

(3) The review board shall be, for administrative purposes only, attached to the Division of Oil and Gas within the Department of Mines and Minerals.

SECTION 12. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The review board shall rule upon:

(a) Objections to proposed coalbed methane wells, their locations, the proposed stimulation, or the proposed completion pursuant to Section 4 of this Act;

(b) Appeals of permit denials arising under subsection (5) of Section 4 of this Act;

(c) Requests for a hearing arising under subsection (3) of Section 5 of this Act ;

(d) Requests for pooling orders pursuant to subsection (1) of Section 16 of this Act;

(e) Requests for the establishment or modification of drilling units for coalbed methane wells;

(f) Requests for the creation or modification of field rules relating to the drilling, completion, and production of coalbed methane wells; and

(g) Requests for the unitization of coalbed methane wells, pools, or fields.

(2) The review board shall meet, hold conferences, and hold hearings at a time and place as designated by the chairman. The chairman may call a meeting of the review board at any time. A majority of the members of the review board shall constitute a quorum for the transaction of any business to come before the review board. All determinations of the review board shall be by majority vote of the quorum present. The commissioner, or his or her designee within the department, shall be the chairman of the review board. The review board shall hold a regular monthly meeting. Notice of all meetings of the review board shall be given to each member by the chairman at least ten (10) days in advance of each meeting, unless otherwise agreed by the members.

(3) The review board shall execute, carry out, administer, and enforce the provisions of this chapter in the manner provided in this section.

(4) The review board may:

(a) Take evidence and issue orders concerning the permitting of a coalbed methane well, its location, stimulation, and the completion pursuant to Section 3 of this Act; issue pooling orders in accordance with subsection (1) of Section 16 of this Act; issue orders regarding the establishment or

modification of drilling units for coalbed methane wells, field rules relating to the drilling, completion, and production of coalbed methane wells; and requests for the unitization of coalbed methane wells, pools, and fields;

(b) Promulgate and enforce administrative regulations and rules necessary to govern the practice and procedure before the review board;

(c) Make relevant investigations of records and facilities as it deems proper in connection with ruling on any objections to a proposed coalbed methane well, its location, the proposed stimulation, or the proposed completion; and

(d) Issue subpoenas for the attendance and sworn testimony from witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, electronic data, and other pertinent documents or data in the review board's own name or at the request of any party.

SECTION 13. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The department shall notify the review board of the objection, request, or appeal as set forth in subsection (1) of Section 12 of this Act and schedule a time and place for a hearing.

(2) Notice of the hearing shall be given not less than fifteen (15) days in advance of the hearing to the applicant, surface owners, and all other parties as required under Section 4, 14, or 17 of this Act, as applicable. The hearing of the review board shall be held within thirty (30) days after the filing of the objection, request or appeals or as soon thereafter as the review board can be assembled.

(3) All proceedings before the review board shall be conducted in accordance with KRS Chapter 13B.

(4) With respect to any objection filed pursuant to Section 3 of this Act concerning the proposed coalbed methane well, or its location, stimulation or completion, appeals arising under subsection (5) of Section 4 of this Act, or requests for a hearing arising under this chapter, the review board shall make a determination as to whether a permit shall be issued by the department and any conditions to be included within the permit, which determination and order shall be consistent with the intent and purposes of KRS Chapters 350 and 352 and this chapter, taking into consideration the following factors that it considers applicable in the particular proceeding:

(a) The declaration of public policy and legislative findings as set forth in this chapter;

(b) Whether the proposed coalbed methane well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal;

(c) The feasibility of moving the proposed drilling location to another location;

(d) Whether any stimulation of the workable coalbed will have a significant adverse affect on the mineability of that workable coalbed or any other workable coalbeds within five hundred (500) of the proposed coalbed methane well to be stimulated or within the five hundred (500) foot horizontal radius and fifty (50) vertical feet above or below the workable coalbed proposed to be stimulated or impair mine safety;

(e) Whether the drilling location is above or in close proximity to any mine opening, shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, any abandoned, operating coal mine or any coal mine already surveyed and platted but not yet being operated;

(f) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing or planned pillar of coal, taking into consideration the surface topography;

(g) The extent to which the proposed drilling location interferes with the safe recovery of coal or coalbed methane;

(h) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations;

(i) The technology and methods proposed for the safe and efficient recovery of coal and coalbed methane;

(j) The practicality of locating the coalbed methane well out of a uniform pattern with other wells;

(k) The surface topography and use; and

(l) Any other factor the review board determines would be considered consistent with KRS Chapters 350 and 352 and this chapter.

(5) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon the ability to mine any affected workable coalbed safely and the protection of any workable coalbed for safe future mining, shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (4) of this section, and based thereon shall issue and file with the department a written order directing it to:

(a) Refuse to issue a coalbed methane well permit;

(b) Issue a permit for the proposed coalbed methane well location and any conditions to be included within the permit;

(c) Issue a coalbed methane well permit and any conditions to be included within the permit for an alternate drilling location different from that requested by the applicant; or

(d) Issue a permit authorizing the applicant to stimulate the coalbed methane well in the absence of an agreement of the affected coal interest holders as described in subsection (1) of Section 9 of this Act, as proposed or as modified by the order of the review board.

(6) With respect to any request for a hearing pursuant to Section 5 of this Act by a coalbed interest holder, or any record oil or gas lessor or lessee of any tract being penetrated by a coalbed methane well, to determine whether the well has been abandoned and should be plugged in accordance with this chapter, the review board shall make a determination as to whether the coalbed methane well should be plugged, which determination and order shall be consistent with the intent and purposes of KRS Chapters 350 and 352 and this chapter, taking into consideration the following factors that it considers applicable in the particular proceeding:

(a) Whether the coalbed methane well has ceased to produce in paying quantities, and no dewatering operations are being conducted, for a period of fifteen (15) consecutive months;

(b) Whether the coalbed methane well is being temporarily shut in by the coalbed methane well operator; and

(c) Any other factor the review board determines should be considered consistent with this section.

(7) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon whether the coalbed methane well has been abandoned and should be plugged in accordance with this chapter; shall enter a written order containing findings of fact and conclusions which address any relevant consideration in subsection (6) of this section based thereon; and shall issue and file with the department a written order directing the department to:

(a) Require the coalbed methane well operator to plug and abandon the well;

(b) Allow the coalbed methane well operator to continue to operate and produce the well; or

(c) Allow the coalbed methane well operator to continue to shut in the coalbed methane well on a temporary basis.

(8) Upon receipt of the review board order, the department shall promptly undertake the action directed by the review board, provided that all other provisions of this chapter have been complied with.

SECTION 14. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) In order to prevent the waste of coalbed methane or to protect the correlative rights of the owners of coalbed methane, the review board on its own motion or upon application of an operator of a coalbed methane well or owner of coalbed methane shall have the power to establish or modify drilling units, establish or modify field rules, or unitize coalbed methane wells, pools or fields. Drilling units, to the extent reasonably possible, shall be of uniform shape and size for an entire pool or field. Any operator of a coalbed methane well or owner of coalbed methane may apply to the review board for the creation or modification of drilling units, the establishment or modification of field rules for a pool or field, and the unitization of any coalbed methane wells, pools, or fields.

(2) With respect to any request for the creation or modification of drilling units, establishment or modification of field rules for the pool or field, and the unitization of any coalbed methane wells, pools, or fields, the review board shall grant or deny the request and issue an order consistent with the intent and purposes of KRS Chapters 350 and 352 and this chapter, taking into consideration the following factors that it considers applicable in the particular proceedings:

(a) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells and the spacing requirements of Section 15 of this Act;

(b) The plan of development for the coal, that drilling units conform to mine development plans, and the need for proper ventilation of any mines or degasification of any affected coal seams;

(c) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;

(d) The surface topography and mineral boundaries of the lands underlaid by the coal seams to be included in the unit;

(e) Evidence relevant to the proper boundary of the drilling unit;

(f) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;

(g) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well within the drilling unit; and if so, whether the applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(h) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane well within the drilling unit; and if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the drilling unit for the benefit of the majority of the coalbed methane owners;

(i) If more than one person is interested in operating a coalbed methane well within the drilling unit, the estimated cost of submitting by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed coalbed methane well or wells;

(j) Any other available geological or scientific data pertaining to the pool which is proposed to be developed;

(k) The correlative rights of the operators and owners of coalbed methane, so that each operator and owner may obtain his or her just and equitable share of production from the coalbed methane; and

(l) Any other factor the review board determines should be considered consistent with KRS Chapters 350 and 352, and this chapter.

(3) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon whether to establish or modify a drilling unit, establish or modify field rules or establish or modify the unitization of coalbed methane wells, pools or fields. The review board shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (2) of this section and based thereon shall issue and file with the department a written order:

(a) Establishing or modifying a drilling unit, field rules or unitizing coalbed methane wells, pools or fields;

(b) Refusing to establish or modify a drilling unit, field rules or unitization of coalbed methane wells, pools or fields; or

(c) Attaching certain conditions to the establishment or modification of a drilling unit, field rules, or unitization of coalbed methane wells, pools or fields.

(4) In establishing or modifying a drilling unit for coalbed methane wells, and in order to accommodate the unique characteristics of coalbed methane development, the review board may require that drilling units conform to the mine development plan, if any. If requested by the coal interest holder, well locations and spacing shall correspond with mine operations, including the drilling of multiple coalbed methane wells on the same surface location of each drilling unit.

(5) If an order to establish or modify a drilling unit, field rules or unitization of coalbed methane wells, pools or fields will allow a coalbed methane well to be drilled into or through a workable coalbed, any coal interest holder and any record oil and gas lessor and lessee within the area to be covered by the drilling unit, field rules or unitization of coalbed methane wells, pools or fields may object to the establishment or modification of the drilling unit, field rules or unitization of coalbed methane wells, pools or fields.

(6) The review board may continue a hearing to allow for further investigation and the gathering and taking of additional data and evidence. If at any time during a hearing there is not sufficient evidence for the review board to determine field boundaries, or drilling unit size or shape, the review board may enter a temporary order establishing provisional drilling units, and field boundaries for the orderly development of the pool or field, pending receipt of the information necessary to determine the ultimate pool or field boundaries, and spacing of wells for the pool or field. Upon additional findings of fact, the boundaries of a pool or field and drilling units for the pool or field may be modified by the review board.

(7) Unless otherwise provided for by the review board, after an application for a hearing to establish or modify drilling units or pool boundaries has been filed, no additional wells shall be permitted in the pool or field until the review board's order establishing or modifying the pool or field or unit has been entered.

(8) After the review board issues a field or pool spacing order which creates drilling units or a pattern of drilling units for a pool or field, should an operator or owner of coalbed methane apply for a permit or otherwise indicate a desire to drill a coalbed methane well outside of such drilling units or pattern of drilling units and thereby potentially extend the pool or field, the review board may, on its own motion or the motion of any interested person, require that the coalbed methane well be located and drilled in compliance with the provisions of the order affecting the pool or field.

SECTION 15. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

Except as provided in Section 14 of this Act, or pursuant to voluntary pooling, no permit shall be issued for a coalbed methane well unless the proposed location of a vertical well shall be at least seven hundred fifty (750) feet horizontally from the nearest mineral boundary upon which the well is to be drilled and the proposed location shall be at least one thousand five hundred (1,500) feet horizontally from the nearest coalbed methane well, unless the department orders that a different spacing distance shall apply. Spacing distances for coalbed methane horizontal wells shall be separately established by the department pursuant to this subchapter.

SECTION 16. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Whenever an applicant proposes to drill, deepen, convert, or reopen a well for purposes of production of coalbed methane and the ownership of the right to produce coalbed methane is in dispute, the department shall refer the application to the review board for its consideration and the issuance of appropriate pooling orders, if any, in accordance with Section 17 of this Act. Upon the issuance of a pooling order by the review board, and if all other provisions of this chapter are complied with the department shall issue a permit to drill, deepen, convert, or reopen the well and require the development and operation of all pooled tracts and interests as a single leasehold estate in accordance with the pooling order.

(2) No pooling as permitted by this section shall be ordered except:

(a) When an application has been filed to drill, deepen, or reopen a well within the distance limitations prescribed in Section 15 of this Act; or

(b) A request for pooling has been made pursuant to this section or Section 17 of this Act.

(3) No pooling, as permitted by this section, shall be ordered with respect to any tract or portion thereof upon which a well is drilled, deepened, or converted or reopened:

(a) Unless the pooling was requested prior to the commencement of the drilling, deepening, converting, or reopening of the coalbed methane well; and

(b) Unless the request, if made by the owner of an operating interest who elects to participate in the risk and cost of the drilling, deepening, converting, or reopening of the coalbed methane well, is accompanied by a bond or other security satisfactory to and in an amount set by the review board for the payment of such owner's share of the cost of drilling, deepening, converting, or reopening the well.

(4) Production from any well which is ordered pooled pursuant to this section shall be deemed for all purposes to have been so produced from each tract or portion thereof included in the pool in proportion to the amounts established in the pooling order.

SECTION 17. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The person requesting a pooling order shall provide to the department a list of all persons reasonably known to own an oil or gas interest and all coal interest holders, in any tract upon which the coalbed methane well will be located from the surface to a depth of one hundred (100) feet below the base of the deepest coal seam to be penetrated. A pooling order shall be made only after the department provides notice to all persons reasonably known to own an oil or gas interest and all coal interest holders in any tract upon which the well will be located and any tract or portion thereof proposed to be pooled in any drilling unit, from the surface to a depth of one hundred (100) feet below the base of the deepest coal seam to be penetrated, after a hearing has been held. After filing an application for a pooling order under subsection (1) of Section 16 of this Act, where unknown or nonlocatable owners exist, or at the request of the permit applicant or person requesting a pooling order, the permit applicant shall publish, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:

(a) State that an application for a pooling order is being filed with the review board;

(b) Describe any tract, or portion thereof, proposed to be pooled;

(c) In the case of an unknown owner, identify the name of the last known owner;

(d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and

(e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the permit applicant at the published address and provide a copy of the notification to the review board within twenty (20) days of the date of the publication.

(2) The review board shall grant or deny the request for a pooling order and issue an order consistent with the intent and purposes of KRS Chapters 350 and 352 and this chapter, taking into consideration the following factors that it considers applicable in the particular proceeding:

(a) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells and the spacing requirements of Section 15 of this Act;

(b) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;

(c) The nature and character of any coal seam or seams which will be affected by the proposed coalbed methane well or wells;

(d) The surface topography and mineral boundaries of the lands underlaid by the coal seams to be included in the unit;

(e) Evidence relevant to the proper boundary of the drilling unit;

(f) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;

(g) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the drilling unit; and if so, whether the applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(h) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit, and if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(i) If more than one person is interested in operating a coalbed methane well within the unit, the estimated cost submitted by each such person for drilling, completing, operating, and marketing the coalbed methane from any proposed coalbed methane well or wells;

(j) Any other available geological or scientific data pertaining to the pool which is proposed to be developed;

(k) The correlative rights of the operators and owners of the coalbed methane, so that each operator and owner may obtain his or her just and equitable share of production from the coalbed methane; and

(l) Any other factor the review board determines should be considered consistent with KRS Chapters 350 and 352 and this chapter.

(3) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon whether to grant a pooling order, and shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (2) of this section and based thereon shall issue and file with the department a written order granting the pooling order with any applicable conditions or denying the pooling order.

(4) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of coalbed methane on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners of working interests in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, converting or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared, by all owners of working interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable and actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.

(5) A pooling order shall establish a procedure for the owner who claims a working interest and who does not decide to become a participating working interest owner to elect to either:

(a) Surrender, by means of sale or lease, the interest to a participating working interest owner on a reasonable basis and for a reasonable consideration, which if not agreed upon shall be one-eighth (1/8) of the production attributable to the well; or

(b) Share in the operation of the well as a nonparticipating working interest owner on a carried basis after the proceeds allocable to his or her share equal to two hundred percent (200%) of the share of the costs allocable to his or her interest.

(6) A coalbed methane owner or claimant whose identity and location remain unknown at the conclusion of the hearing concerning the entry of a pooling order for which public notice was given and whose interest is pooled pursuant to subsection (1) of Section 16 of this Act shall be deemed to have elected to lease the interest to the coalbed methane operator, exclusive of one-eighth (1/8) of the production attributable to the unleased interest, and shall not be entitled to make the election established in subsection (5) of this section.

(7) Except as provided in this section, a coalbed methane owner who does not make an election under the pooling order within thirty (30) days of the entry of the order shall be deemed to have leased the coalbed methane interest to the coalbed methane well operator in the manner established in subsection (6) of this section.

(8) A person whose interest is subject to a coalbed methane lease or other agreement which grants to another the right to operate or conduct operations shall not own an operating interest for the purposes of this section.

(9) A certified copy of any pooling order entered under this section shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.

(10) Each pooling order for a coalbed methane well issued pursuant to subsection (1) of Section 16 of this Act shall provide for the establishment of an interest-bearing escrow account to be maintained by the department. The escrow account shall receive deposits and hold payment for costs and proceeds attributable to the conflicting interests as follows:

(a) Each participating working interest owner, except for the unit operator, shall deposit in the escrow account the owner's proportionate share of the costs allocable to the ownership interest claimed by each participating working interest owner as set forth in the pooling order; and

(b) The unit operator shall collect all proceeds from the sale or use of coalbed methane and deposit in the escrow account all proceeds attributable to the conflicting interests of lessors, lessees, or royalty owners and all proceeds in excess of the recovery of all capital costs and expenses and all ongoing operational expenses including reasonable overhead costs and operating fees attributable to conflicting working interests.

(11) The department shall order payment of principal and accrued interest from the escrow account to all legally entitled entities within thirty (30) days of receipt by the department of notification of the final legal determination of entitlement or upon agreement of all entities claiming an ownership interest in the coalbed methane. Upon the department's final determination:

(a) Each legally entitled participating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest;

(b) Each legally entitled nonparticipating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest, less the cost of being carried as a nonparticipating working interest owner as determined by the election of the person under the applicable pooling order;

(c) Each person leasing or deemed to have leased its coalbed methane ownership interest to the unit operator shall receive a share of the royalty proceeds as set out in the applicable pooling order attributable to the conflicting interests of the lessees;

(d) The unit operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner, but only to the extent that the costs and expenses described in subsection (10)(b) of this section have not been recouped from production proceeds;

(e) Each participating working interest owner who is determined not to hold an ownership interest shall receive a refund of all amounts placed in escrow pursuant to subsection (10)(a) of this section plus interest earned thereon; and

(f) All amounts remaining in escrow, after distribution of amounts described in paragraphs (a), (b), (c), (d), and (e) of this subsection, shall be distributed to the legally entitled participating working interest owners in proportion to their interests.

SECTION 18. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Any person aggrieved by any order issued by the review board under this chapter shall have the right to bring a civil action for review of the order by filing a complaint in the Circuit Court of the county in which the premises or any portion thereof is located as established by the order, or in Franklin Circuit Court.

(2) The civil action shall be brought within thirty (30) days after the order is issued, and in the event no civil action is filed within the thirty (30) day period, the order shall be final.

(3) In any civil action the burden of proof shall be upon the party challenging the order. The order shall be deemed prima facie valid. Any party to the civil action may offer evidence for any part of the record of the hearing which resulted in the order, and any other relevant evidence.

(4) In any civil action no new evidence may be introduced, except as to fraud or misconduct of some person engaged in the hearing before the review board. New evidence may be introduced if, upon motion and for good cause shown, the court determines that the interest of justice will be better served by the introduction of new evidence. The court, sitting without a jury, shall hear the cause upon the record before it. The court shall dispose of the civil action in a summary manner, being limited to determining whether or not: the review board acted without or in excess of its powers; the order was procured by fraud; the order is not in conformity with the provisions of this chapter; the order is clearly erroneous on the basis of reliable, probative, and material evidence contained in the whole record; the order is arbitrary, capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion. The court shall enter its findings in the order book as a judgment of the court, and the judgment shall have the effect and be enforceable the same as any other judgment of the court in civil cases.

(5) The practice, pleading, and proceedings in the civil action shall be in accordance with the Rules of Civil Procedure.

(6) During the pendency of the civil action, the court may stay the order until it shall enter its decree. The court shall have jurisdiction to enter a decree affirming or setting aside the order, or remand the cause with directions to modify the order to conform to the provisions of this chapter. Appeals may be taken by any party to the suit in the same manner and to the same extent as in other civil actions.

SECTION 19. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) A coalbed methane well penetrating one (1) or more workable coalbeds shall be drilled in a manner that will exclude, if practicable, all coalbed methane or coalbed methane pressure from the workable coalbed, except as is found in the workable coalbed itself. Each string of casing that is run through a workable coalbed shall be seated at least thirty (30) feet below the workable coalbed in twenty (20) feet of cement, mud, clay, or other nonporous material that will make an effective seal. If a second workable coalbed is found less than thirty (30) feet below the first workable coalbed, the casing shall be seated and mudded off as above provided at least thirty (30) feet below the second workable coalbed. If gas is found between the two (2) workable coalbeds, it shall be treated as prescribed by this chapter. After any such string of casing has been properly seated, drilling may proceed immediately.

(2) When a coalbed methane well is drilled through the horizon of a workable coalbed where the coal has been removed, the hole shall be drilled at least thirty (30) feet below the workable coalbed, and shall be of a size sufficient to permit the placing of a liner, which shall start not less than twenty (20) feet beneath the horizon of the workable coalbed and extend not less than twenty (20) feet above it. The largest sized casing to be used in the well shall be centrally placed within this liner. The liner may be welded to the casing to be used, and the space between the liner and the casing shall be filled with cement as the liner and casing are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty (20) feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling may proceed. If it is necessary to drill through the horizon of two (2) or more workable coalbeds where the coal has been removed, the liner shall be started not less than twenty (20) feet below the lowest horizon penetrated and shall extend to a point not less than twenty (20) feet above the highest horizon penetrated.

SECTION 20. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

If any coalbed methane well produces coalbed methane, all coal-protecting strings of casing shall remain in place during the life of the well. The top ends of all the strings shall be provided with casing heads or other suitable devices that will allow the free passage of coalbed methane and prevent filling the annular spaces outside the casing with dirt or debris.

SECTION 21. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) No person shall abandon or remove casings from any coalbed methane well, either dry or producing, without first plugging the well in a secure manner approved by the department and consistent with administrative regulations. Upon the department's plugging of an abandoned coalbed methane well in accordance with the requirements of this subsection, the department may sell all equipment removed from that well by sealed bid, or may include the equipment as part of compensation in the contract for the plugging of the well. Proceeds from the sale shall be deposited into the coalbed methane well plugging fund, established in subsection (3) of Section 24 of this Act.

(2) Not less than thirty (30) days before advertising for bids for the plugging of coalbed methane wells, the department shall publish, in a newspaper of general circulation, and in locally published newspapers serving the areas in which the wells proposed for plugging are located, notices of all wells on which there is salvageable equipment, described as to farm name, Carter Coordinate, and state plane coordinate location, for which the department intends to seek bids for plugging. If a person other than the operator claims an interest in the equipment of a well proposed for plugging, the person shall provide documentation of that interest to the department within thirty (30) days of the date of publication of the notice of the department's intent to plug a well. Prior to the department's advertising of bids for the plugging of a well, the department shall release the well's equipment to the person deemed to have an interest in that equipment. It shall be the duty of the interest holder to remove the equipment before the well is plugged. If documentation as to an asserted interest is not provided to the department in the manner described in this subsection or if a person deemed to be an interest holder fails to remove the equipment before a well is plugged, the department may sell or otherwise dispose of the equipment in accordance with this section.

(3) If a person fails to comply with subsection (1) of this section, any person lawfully in possession of land adjacent to the coalbed methane well or the department may enter on the land upon which the well is located and plug the well in the manner provided in subsection (1) of this section, and may maintain a civil

action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This subsection shall not apply to persons owning the land on which the well is situated, and drilled by other persons.

(4) In conjunction with the plugging and abandonment of any coalbed methane well or the reworking of any coalbed methane well, the operator shall restore the surface and any improvements thereon to a condition as near as practicable to their condition prior to commencement of work. The surface owner and operator may waive this requirement in writing, subject to the approval of the department that the waiver is in accordance with its administrative regulations.

SECTION 22. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The department shall exercise supervision over the drilling, casing, plugging, and filling of all coalbed methane wells. The department shall exercise supervision over all mining operations in close proximity to any well. The department shall have access to the records and properties of coal, oil, gas and coalbed methane operators when necessary.

(2) The department may receive, or may file on its own motion, formal complaints that drilling or mining operations are being conducted contrary to the provisions of this chapter or to the order of the department or review board, and shall hold administrative hearings on the complaints, in accordance with KRS Chapter 13B. Following a hearing, the department shall issue a final order necessary to secure the proper administration of this chapter.

SECTION 23. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) The department is hereby authorized to adopt all rules, administrative regulations, and amendments to implement the provisions of this chapter. All rules, administrative regulations, and amendments promulgated under this chapter shall be promulgated by the department after notice and a hearing. At all hearings held to consider any rules, administrative regulations, or amendments thereto, any interested person shall be entitled to be heard.

(2) All hearings shall be held at a time and place as is specified by the department according to rules and regulations promulgated under this chapter. A written record of each hearing shall be kept; however, if not at variance with KRS 61.870 to 61.884, the keeping of a record may be waived by all parties who participate therein. All interested persons shall be entitled to be heard at all hearings conducted under this chapter.

(3) Operators shall submit annual production information for each coalbed methane well on a form prescribed by the department.

SECTION 24. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) When any person submits to the department an application for a permit to drill a coalbed methane well, or to reopen, deepen, or temporarily abandon any coalbed methane well which is not covered by a surety bond, the department shall, except as provided in this section, require from the well operator a bond in the sum of five thousand dollars ($5,000). The bonds shall be made in favor of the Department of Natural Resources, conditioned that the wells upon abandonment shall be plugged in accordance with the administrative regulations and that all records required by the department be filed as specified. All bonds shall remain in effect until the plugging of the well is approved by the department, or the bond is released by the department. Any well operator in lieu of the bond may file with the department a blanket bond in a sum of one hundred thousand dollars ($100,000), covering all coalbed methane wells drilled or to be drilled in the Commonwealth by the principal in the bond, and the acceptance and approval by the department of the blanket bond shall be in full compliance with the above provision requiring an individual well bond. The department may establish a bond in a sum greater than five thousand dollars ($5,000) for an individual well or blanket bond in sum greater than one hundred thousand dollars ($100,000) if the department determines that the particular circumstances of the drilling of the well or wells warrant an increase in the bond amount. A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may also be accepted by the department. If an operator is required to post individual well bonds exceeding a total of five thousand dollars ($5,000) or elects to post a blanket bond, the certificate of deposit shall be accepted by the department in lieu of that portion of the amount of the bonds exceeding five thousand dollars ($5,000). The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety

authorized to do business in the Commonwealth. A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the coalbed methane well plugging fund, created in subsection (3) of this section, to be used in accordance with the purposes described therein.

(2) A successor to the well operator shall post bond, pay a twenty-five dollar ($25) fee per well to the department, and notify the department in writing in advance of commencing use or operations of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.

(3) All sums received through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the coalbed methane well plugging fund, which shall be in an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned coalbed methane wells coming within the authority of the department pursuant to this chapter. The plugging of any coalbed methane wells pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.

SECTION 25. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Any person to whom a permit is issued pursuant to this chapter shall file, within ninety (90) days after termination of operations conducted under the permit, with the department for transmittal to the Kentucky Geological Survey on forms to be furnished by the department the following information relating to the well:

- ***(a) A copy of the driller's log certified to be true and accurate;***
- ***(b) The depth and thickness of all water zones encountered and logged;***
- ***(c) The depth of all showing of oil, gas, or coalbed methane;***
- ***(d) The depth and thickness of all coal seams encountered; and***
- ***(e) A true copy of all electrical surveys and similar logs and surveys taken. If the person to whom the permit is issued obtains a copy of the electrical survey or similar log or survey in electronic form, the operator shall submit the electrical survey or similar log in electronic form if requested by the department.***

(2) Upon request by the department, any person to whom a permit is issued shall save for the Kentucky Geological Survey samples of all cuttings from the well drilled or deepened pursuant to the permit for a period of ninety (90) days after completion thereof.

(3) Upon request by any person furnishing information under this section, the information shall be kept confidential, for a period of one (1) year after the information is furnished by such person.

(4) This section shall not apply to wells drilled or deepened as geological or structure test holes.

SECTION 26. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) In all cases in which there has been a complete severance of the ownership of the coalbed methane from the ownership of the surface to be disturbed, the applicant for a coalbed methane well permit shall comply with all of the substantive requirements of KRS 353.5901 and 353.595.

(2) In all cases other than a complete severance of the ownership of coalbed methane from the ownership of the surface to be disturbed, the applicant for a coalbed methane well shall submit to the department an operations and reclamation proposal at the time of filing an application for a permit to drill, deepen, or reopen a coalbed methane well. The proposal shall be filed on forms provided by the department and shall include:

- ***(a) A proposal to prevent erosion of and sedimentation from the well site and all disturbed areas, including roads;***

(b) A narrative description of the location of all areas to be disturbed, including the location of roads, gathering lines, the well site, tanks, and other storage facilities, and any other information that may be required by the department. Accompanying this narrative description shall be a plat depicting the location on the land of all of these disturbances or facilities; and

(c) Any additional information that the department may require.

SECTION 27. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Each coalbed methane well permit issued under this chapter shall expire one (1) year after the date issued, unless the drilling, deepening, or reopening of a coalbed methane well is commenced prior to the expiration of the one (1) year period. However, the permit term shall be extended by one (1) year if, prior to the expiration date, the permit applicant:

(a) Notifies the department in writing of the applicant's request for an extension;

(b) Notifies all coal interest holders originally entitled to receive a copy of the plat under Section 3 of this Act;

(c) Submits an affidavit, or verified statement, stating that the information in the original permit application is still correct; and

(d) Submits a fee for the extension in an amount equal to the permit fee required by Section 8 of this Act.

(2) The extension of the permit term pursuant to subsection (1) of this section shall not create a right to object to the coalbed methane well location under Section 4 of this Act nor to mediation under KRS 353.5901.

SECTION 28. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

In any case where title to subsurface minerals has been severed in such a way that title to natural gas underlying the tract and title to coal underlying the tract are in different persons, it shall be an affirmative defense to any action for willful trespass arising from the drilling, development, operation, and production of coalbed methane from any coal seam or gob area underlying the tract, that the operator of the coalbed methane well permitted, drilled, completed, and produced the coalbed methane well under color of title of any instrument, deed, or lease for oil and gas purposes from the gas owner, or any instrument, deed, or lease for coal mining purposes from the coal owner.

SECTION 29. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Whenever it appears that a person is violating or threatening to violate any provision of this chapter, or any rule, administrative regulation, or order promulgated or issued under this chapter, the department may bring suit against the person in the Circuit Court of the county where the violation occurred or is threatened, the Circuit Court in the county in which the defendant resides or in which any defendant resides if there is more than one (1) defendant, or the Franklin Circuit Court to restrain the person from continuing the violation or from carrying out the threatened violation. In the suit, the court shall have jurisdiction to grant without bond or other undertaking the prohibitory or mandatory injunction as the facts may warrant, including a temporary restraining order or injunction.

(2) Whenever it appears that any person is violating any provision of this subchapter, or any rule, administrative regulation or order promulgated or issued hereunder, the Attorney General or any person who is adversely affected by the violation may bring suit to restrain the violation in any court in which the department might have brought suit. The department shall be made a party defendant in the suit in addition to the person allegedly violating a provision or any rule, administrative regulation, or order promulgated or issued under this chapter.

SECTION 30. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in this chapter shall be construed as affecting, in any way, the right of any person to enforce or protect, under applicable law, his or her interest in water resources affected by a coalbed methane well or related operations.

(2) The operator of a coalbed methane well shall replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by

contamination, diminution, or interruption proximately resulting from the operation of a coalbed methane well.

SECTION 31. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Any person who violates any provision of this chapter shall be subject to a fine of not more than one thousand dollars ($1,000) or imprisonment for a term not exceeding one hundred eighty (180) days, or both.

(2) Any person who continues to violate any provision of this chapter, or any administrative regulation or order promulgated or issued under this chapter after being notified in writing of the violation by the department, shall be subject to a fine of not more than one thousand dollars ($1,000) or imprisonment for a term not exceeding one hundred eighty (180) days, or both.

(3) Any person who does any of the following for the purpose of evading or violating this chapter or any administrative regulation or order promulgated or issued under this chapter shall be subject to a fine of not more than one thousand dollars ($1,000) or imprisonment for a term not exceeding one hundred and eighty (180) days, or both:

(a) Makes or causes to be made a false entry or statement in a report, record, account, or memorandum, required by this chapter, or by any administrative regulation or order under this chapter;

(b) Omits or causes to be omitted from a report, record, account, or memorandum full, true, and correct entries and information as required by this chapter, or by any administrative regulation or order under this chapter; or

(c) Removes from this Commonwealth or destroys, mutilates, alters, or falsifies a report, record, account, or memorandum required by this chapter, or by any administrative regulation or order.

(4) Any person who knowingly aids or abets any other person in the violation of any provision of this chapter, or any administrative regulation or order promulgated or issued under this chapter, shall be subject to the same penalty as that prescribed in this section for the violation by the other person.

SECTION 32. A NEW SECTION OF KRS CHAPTER 349 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in this chapter shall be construed to preclude any coal interest holder from removing support of the surface and any structure or facilities thereon and other strata as such rights may exist in any severance deed or other contract.

(2) Nothing in this chapter is intended to or shall be construed as superseding, impairing, abridging, or affecting any specific contractual rights or obligations now or hereafter existing between the respective owners of coal, oil, gas, or other minerals, or any interests therein.

(3) Nothing in this chapter shall be construed to, or be used or interpreted to, determine ownership.

(4) Nothing in this chapter shall be construed to, or be used or interpreted to, apply to any well otherwise permitted, approved, or regulated under KRS Chapter 353 except for the wells that are to be converted to or operated as coalbed methane wells.

(5) Nothing in this chapter shall be construed to authorize any limitation of production of coalbed methane from any coalbed methane well, lease, drilling unit, pool, field, or property to prevent or control economic waste or to limit production to market demand.

(6) This chapter shall be liberally construed so as to effectuate the declaration of public policy set forth in Section 1 of this Act.

(7) Coalbed methane wells shall not be subject to the provisions of KRS Chapter 353, except as expressly provided in this chapter.

(8) Gathering lines associated with coalbed methane wells shall be regulated under KRS 353.500(2) and the regulations promulgated thereunder.

Approved April 7, 2004

CHAPTER 66

(HCR 8)

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Economic Development and Tourism to conduct a study on the development of the Lexington/Big Sandy Rail Trail and to suggest a strategy for its completion.

WHEREAS, the conversion of abandoned or unused railroad trails for pedestrian and nonmotorized use has become national policy through the National Trails Systems Act; and

WHEREAS, Rails to Trails projects throughout the United States have been shown to strengthen local economies through tourism and job development, preserve cultural and historic areas, protect natural green spaces, create family and individual recreational opportunities, preserve transportation options, encourage healthy lifestyles, and enhance community prosperity; and

WHEREAS, over 10,000 miles of rail-trails have been created across the country, but Kentucky has approximately 50 rail-trail miles; and

WHEREAS, the Lexington/Big Sandy Rail Trail was designated a Community Millennium Trail and has the potential to improve the quality of life for Kentucky citizens and connect communities stretching 109 miles from Lexington to Ashland;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Interim Joint Committee on Economic Development and Tourism, or its logical successor, shall conduct a study focusing on the development of the Lexington/Big Sandy Rail Trail and suggest a strategy for its completion.

Section 2. The committee shall report its findings and recommendations to the Legislative Research Commission no later than December 17, 2004. The report shall include at least the following:

(1) Solutions for overcoming existing barriers to the trail's development;

(2) Potential funding sources to complete the trail;

(3) Projected date for completion of the trail;

(4) Recommendations on entities best suited to implement the strategy for the trail's completion; and

(5) Recommendations on entities best suited to administer the trail, in both the short and long term.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 7, 2004

CHAPTER 67

(HCR 223)

A CONCURRENT RESOLUTION urging the House Armed Services Committee as well as the entire United States Congress to adopt H.R. 327 awarding a Medal of Honor posthumously to First Lieutenant Garlin Murl Conner.

WHEREAS, Lieutenant Garlin Murl Conner was a native of Clinton County, Kentucky, who served with distinction and valor in the United States Army during World War II; and

WHEREAS, Kentucky Congressman Ed Whitfield introduced H.R. 327 to the 108th Congress to bestow this highly deserved honor on Lieutenant Garlin Murl Conner; and

WHEREAS, Lieutenant Garlin Murl Conner is Kentucky's most decorated war hero, who served on the front lines for over eight hundred days in eight major campaigns; he was wounded seven times but returned to combat and continued to fight on the front lines after each wound; and

WHEREAS, during World War II, over forty 3rd Division soldiers received Medals of Honor, more than any other Division; however, Lieutenant Garlin Murl Conner was not awarded the Medal of Honor due to an oversight and failure to process the paperwork; and

WHEREAS, Lieutenant Conner served in the 3rd Infantry Division with Audie L. Murphy, America's most decorated hero of all wars; as compared to Audie L. Murphy, Lieutenant Conner was awarded more Silver Stars for acts of valor, fought in more campaigns, served on the front lines longer, and was wounded more times; he was awarded many honors including the Distinguished Service Cross, the Silver Star with three Oak Leaf Clusters, the Bronze Star, the Purple Heart with six Oak Leaf Clusters, and other medals; and

WHEREAS, on June 20, 1945, Lieutenant Conner was awarded the Croix de Guerre, the French Medal of Honor, that was also awarded to Sergeant Alvin C. York, America's most decorated World War I soldier, who was a friend of Lieutenant Conner and lived a few miles from Lieutenant Conner's home on the Kentucky-Tennessee border; and

WHEREAS, Major General Lloyd B. Ramsey (Ret.), who was Lieutenant Conner's battalion commander during combat in World War II, is still living and has signed the necessary documents for awarding the Medal of Honor to Lieutenant Conner; in 1945, Major General Ramsey wrote that Lieutenant Conner was "one of the outstanding soldiers of this war, if not *the* outstanding....I've never seen a man with as much courage and ability as he has"; and

WHEREAS, Stephen Ambrose, America's foremost World War II historian, founder of the D-Day Museum in New Orleans, Louisiana, and author of many books, wrote on November 11, 2000, "I am in complete support of the effort to make Lieutenant Garlin M. Conner a Medal of Honor recipient. What Lieutenant Conner did in stopping the German assault near Houssen, France in January 1945 was far above the call of duty. I've met and talked at length with many Medal of Honor recipients and am sure they would all agree that Lieutenant Conner more than deserves the honor of joining them"; and

WHEREAS, on April 3, 2001, 3rd Infantry Division leaders named the new EAGLE BASE in Bosnia-Herzegovina after Lieutenant Conner because of his gallantry in World War II and because "It's a company-grade forward operating base named after a soldier with a company-grade rank"; and

WHEREAS, Richard Chilton, a former Green Beret from Genoa City, Wisconsin, has been on a mission since 1996 to have the Medal of Honor awarded to Lieutenant Conner; his research has documented that Lieutenant Conner is one of the great combat heroes of World War II, equal in every way to Audie L. Murphy; Chilton has made presentations to dozens of schools about Lieutenant Conner's war record and has copies of over 2,500 letters written by students to President George W. Bush requesting the Medal of Honor be awarded; after reviewing Chilton's information, a host of former war veterans have written Congress requesting passage of H.R. 327 to award the Medal of Honor to one of America's greatest citizen soldiers, Lieutenant Garlin Murl Conner;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The General Assembly of the Commonwealth of Kentucky urges the House Armed Services Committee as well as the entire United States Congress to adopt H.R. 327 awarding a Medal of Honor posthumously to First Lieutenant Garlin Murl Conner.

Section 2. The Clerk of the House of Representatives shall send a copy of this Resolution to: Congressman Duncan Hunter, Chairman of the Armed Services Committee; the Clerk of the House of Representatives of the United States; the Clerk of the Senate of the United States; each member of the Kentucky Congressional Delegation; and to the widow of 1st Lieutenant Garlin Murl Conner, Mrs. Pauline W. Conner, Route 1, Box 208, Albany, Kentucky 42602.

Approved April 7, 2004

CHAPTER 68

(SB 40)

AN ACT relating to prescriptions.

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

Section 1. KRS 218A.202 is amended to read as follows:

(1) The Cabinet for Health Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy licensed by the Kentucky Board of Pharmacy.

(2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth or who is licensed by the Kentucky Board of Pharmacy shall report to the Cabinet for Health Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

(a) A drug administered directly to a patient; or

(b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Health Services unless a waiver has been granted by the cabinet to an individual dispenser.

(6) The Cabinet for Health Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A state, federal, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records; ***or***

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient**.**

(7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.~~[; or]~~

(8)~~[(f)]~~ A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction***, except that the Department for Medicaid***

Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(9) ~~[(7)]~~ The Cabinet for Health Services, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(10) ~~[(8)]~~ The data and any report obtained therefrom shall not be a public record***, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B***.

(11) ~~[(9)]~~ Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.

(12) ~~[(10)]~~ Knowing disclosure of transmitted data to a person not authorized by subsection (6) ***to subsection (8)*** of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.

(13) ~~[(11)]~~ The Governor's Office for Technology, in consultation with the Cabinet for Health Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:

(a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and

(b) Study the use of an interactive system that includes a relational data base with query capability.

(14) ~~[(12)]~~ Provisions in subsections (1) to ***(12)*** ~~[(10)]~~ of this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection ***(13)*** ~~[(11)]~~ of this section.

Section 2. KRS 218A.240 is amended to read as follows:

(1) All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Health Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators,~~[~~ ~~and]~~ to expend funds for the purpose of obtaining evidence***, and to use data obtained under subsection (7) of Section 1 of this Act in any administrative proceeding before the cabinet***.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health Services.

(4) Designated agents of the Cabinet for Health Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

(a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

(b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

(c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.

(d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.

(6) The Cabinet for Health Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.

Approved April 7, 2004

CHAPTER 69

(SB 143)

AN ACT relating to embalmers and funeral directors.

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

Section 1. KRS 316.030 is amended to read as follows:

(1) No person shall engage in, or attempt to engage in, embalming or funeral directing in the Commonwealth of Kentucky unless the person is licensed under the provisions of this chapter.

(2) ***All Kentucky-licensed persons who practice embalming or funeral directing in Kentucky shall practice from a funeral establishment that is licensed to operate under the provisions of this chapter.***

(3) One (1) member of every firm, and one (1) officer and one (1) stockholder of every corporation, that engages in embalming and funeral directing in Kentucky, shall be a Kentucky-licensed embalmer and a Kentucky-licensed funeral director.

(4) ~~[(3)]~~ One board shall issue an embalmer's license to an applicant who:

(a) Is at least eighteen (18) years of age;

(b) Is of good moral character;

(c) Has graduated from high school or possesses a High School Equivalency Diploma;

(d) Has received an associate degree in funeral services from a college or university accredited by the American Board of Funeral Service Education;

(e) Has served an apprenticeship of one (1) year in a Kentucky funeral establishment under the supervision of a Kentucky-licensed embalmer;

(f) Has taken an active part during the apprenticeship in assisting with the embalming of at least twenty-five (25) dead human bodies under the direct supervision of a Kentucky-licensed embalmer;

(g) Has paid to the board an examination fee of seventy-five dollars ($75); and

(h) Has passed an examination prepared or approved by the board.

(5) ~~[(4)]~~ The board shall issue a funeral director's license to an applicant who:

(a) Is at least eighteen (18) years of age;

(b) Is of good moral character;

(c) Has graduated from high school or possesses a High School Equivalency Diploma;

(d) Has served an apprenticeship of three (3) consecutive years in a Kentucky funeral establishment under the supervision of a Kentucky-licensed funeral director. An associate degree in funeral services from a college or university accredited by the American Board of Funeral Service Education shall substitute for

two (2) years of the apprenticeship. The completion of thirty (30) semester credit hours or the equivalent from an accredited college or university shall substitute for one (1) year of the apprenticeship. At no time shall more than two (2) years of the apprenticeship be substituted;

(e) Has taken an active part during the apprenticeship in assisting with the management of at least twenty-five (25) funerals under the direct supervision of a Kentucky-licensed funeral director;

(f) Has paid to the board an examination fee of seventy-five dollars ($75); and

(g) Has passed an examination prepared or approved by the board.

(6) ~~[(5)]~~ An applicant may serve embalming and funeral directing apprenticeships concurrently.

(7) ~~[(6)]~~ At the beginning of an apprenticeship, an applicant for an embalmer's or a funeral director's license shall:

(a) Appear before the board;

(b) Pay to the board a registration fee of thirty dollars ($30); and

(c) File with the board the sworn statement of the supervising Kentucky-licensed embalmer or the Kentucky-licensed funeral director averring that the applicant will work full-time under supervision in the funeral establishment and will receive a regular salary.

(8) ~~[(7)]~~ An applicant shall work full-time in the funeral establishment during the apprenticeship and shall receive a regular salary.

(9) ~~[(8)]~~ An applicant shall file with the board semiannually during the apprenticeship sworn statements by the applicant and the supervising Kentucky-licensed embalmer or Kentucky-licensed funeral director setting out the number of hours worked, the number of embalmings or funerals in which the applicant has assisted, and the salary received.

(10) ~~[(9)]~~ A Kentucky-licensed embalmer or a Kentucky-licensed funeral director shall not supervise more than five (5) applicants serving apprenticeships at any one (1) time.

Section 2. KRS 316.140 is amended to read as follows:

(1) Any person holding an embalmer's or a funeral director's license issued in another state or federal district may obtain a Kentucky embalmer's or a Kentucky funeral director's license if the board finds that the person, before or after obtaining a license in another state or federal district, has met the same or similar requirements for a license as set out in KRS 316.030 and pays to the board a fee equal to the license renewal fee.

(2) The board may issue an annual courtesy card to a licensed funeral director or licensed embalmer from another state that has reciprocal laws with Kentucky upon application and payment by the funeral director or embalmer of a fee prescribed by the board in administrative regulations promulgated under KRS Chapter 13A. The application shall be approved by the board, at its discretion. A holder of a courtesy card shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in Kentucky nor shall he or she be permitted to maintain an office in this state. ***The requirement in Section 1 of this Act that all Kentucky-licensed embalmers or funeral directors who practice in Kentucky shall practice from a funeral establishment that is licensed to operate under the provisions of this chapter shall not apply to the holder of a courtesy card.*** A violation of this section or any other section of this chapter shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator and to pursue other remedies provided by this chapter.

Approved April 7, 2004

CHAPTER 70

(SB 273)

AN ACT relating to fireworks.

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

Section 1. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any fireworks, except as follows:

(1) In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every display shall be handled by a competent operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, shall not be hazardous to property or endanger any person. Permits shall be filed with the Office of State Fire Marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. ***For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.***

(2) The sale, at wholesale, of any fireworks for supervised displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.

(3) The sale, at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation.

(4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.

(5) The use of fuses and railway torpedoes by railroads.

(6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.

(7) The use of any pyrotechnic device by military organizations.

(8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.

(9) The sale of common fireworks as permitted pursuant to KRS 227.715.

Section 2. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the common fireworks described in KRS 227.702(1) may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

(1) Any person or business intending to sell common fireworks shall register annually with the state fire marshal's office, which may assess a fee of no more than ***fifty***~~[five]~~ dollars ***($50)***~~[($5)]~~ for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business;

(2) The annual registration required by subsection (1) of this section shall be received by the state fire marshal's office at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended;

(3) Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;

(4) Each site at which fireworks are offered for sale shall have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10;

(5) No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"

(6) No person or business shall give, offer for sale, or sell any common fireworks listed in KRS 227.702 to any person under sixteen (16) years of age;

(7) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the fire marshal may take that action, as provided in KRS 227.330(6).

Section 3. KRS 227.720 is amended to read as follows:

No permit shall be issued under KRS 227.710 unless the applicant shall give bond or evidence of liability insurance deemed adequate by the official to whom application for the permit is made, in a sum not less than ***one million***~~[ten thousand]~~ dollars ***($1,000,000)***~~[($10,000)]~~. However, the local fire chief or state fire marshal may require a larger amount if in their judgment the situation requires it, conditioned for the payment of all damages which may be caused thereby either to a person or to property by reason of the permitted display, and arising from any acts of the licensee, his agents, employees or subcontractors.

Approved April 7, 2004

CHAPTER 71

(HB 435)

AN ACT relating to fire departments and making an appropriation therefor.

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

Section 1. KRS 95A.262 is amended to read as follows:

(1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.

(2) Except as provided in subsection (3) of this section, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot eight thousand dollars ($8,000) annually to each qualifying department, and beginning on July 1, 2001, the commission shall allot eight thousand two hundred fifty dollars ($8,250) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars ($500) of its allotment. If two (2) or more qualified volunteer fire departments, as defined in KRS 95A.500 to 95A.560, merge after January 1, 2000, then the allotment shall be in accordance with the provisions of KRS 95A.500 to 95A.560. The commission shall recommend to the commissioner of the Department of Housing, Buildings and Construction the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A to define satisfactory participation in the Kentucky fire incident reporting system. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one-half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health

insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

(3) There shall be allotted two hundred thousand dollars ($200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars ($200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.

(4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.

(7) The amount of reimbursement for any given year for costs incurred by the Kentucky Community and Technical College System for administering these funds, including, but not limited to, the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.

(8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.

(9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

(a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;

(b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;

(c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;

(d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;

(e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;

(f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

(g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.

(10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars ($10,000) or the actual amount of the loss, whichever is less.

(11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.

(12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.

(13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.

(14) There shall be allotted each year of the 1992-93 biennium one million dollars ($1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars ($1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.

(15) For fiscal year 2004-2005 and each fiscal year thereafter there is allotted one million dollars ($1,000,000) from the fund established in Section 2 of this Act to be used by the commission to conduct training-related activities.

Section 2. KRS 95A.220 is amended to read as follows:

(1) There is established the "Firefighters Foundation Program Fund" consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds and earnings on the investments of those proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. The fund may also receive any other funds, gifts or grants made available to the state for distribution to local governments and volunteer fire departments in accordance with the provisions of KRS 95A.200 to 95A.300 and KRS 95A.262.

(2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account. Beginning with the fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars ($3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.

(3) Moneys in the fund are hereby appropriated by the General Assembly for the purposes provided in KRS 95A.200 to 95A.300.

Approved April 7, 2004

CHAPTER 72

(HB 493)

AN ACT relating to nonsmoking in public areas of the Capitol and Capitol Annex.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

(1) As of the effective date of this Act, there shall be no smoking in public areas of the Capitol or Capitol Annex, except as permitted in subsection (2) of this section. For purposes of this section, "public area" means any hallway, office shared by more than one (1) person, stairwell, restroom, meeting room, cafeteria, or conference room.

(2) The governing authority for each branch of state government, each in regard to space allocated to and occupied by that respective branch of state government, may designate one (1) or more smoking areas in the Capitol and one (1) or more smoking areas in the Capitol Annex. Each smoking area shall be an enclosed area that is not a public area, is clearly designated as a smoking area, and is maintained by a ventilation system that does not disburse the smoke or smoke byproducts into any other area of the Capitol or Capitol Annex.

Section 2. KRS 61.165 is amended to read as follows:

Except as otherwise specified for the Capitol and Capitol Annex in Section 1 of this Act, a policy for smoking in governmental office buildings or workplaces may be adopted by state, county, municipal, special district, or urban-county governments.

(1) ***Except as otherwise specified for the Capitol and Capitol Annex in Section 1 of this Act,*** any policy relating to smoking in state office buildings or workplaces shall:

(a) Be by executive order of the Governor or action of the General Assembly;

(b) Require the governmental authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

(c) Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority.

(2) Any policy relating to smoking in governmental office buildings or workplaces of counties, municipalities, special districts, or urban-county governments shall:

(a) Be adopted by the legislative body of the government;

(b) Be in writing;

(c) Require the government authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

(d) Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority.

(3) This section shall not apply to state universities, state-operated hospitals and residential facilities for the mentally ill and the mentally retarded, state-operated veterans' nursing homes and health facilities, and jails or detention facilities.

Approved April 7, 2004

CHAPTER 73

(SB 138)

AN ACT relating to payments for sexual assault examinations, making an appropriation therefor, and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

(1) There is established in the State Treasury the sexual assault victim assistance fund to be administered by the Crime Victims' Compensation Board for the purpose of funding medical examinations for victims of sexual assault as provided in subsection (4) of this section and in Section 2 of this Act. All moneys deposited or paid into the sexual assault victim assistance fund are appropriated and shall be available to the Crime Victims' Compensation Board. Funds shall be disbursed by the State Treasurer upon the warrant of the Crime Victims' Compensation Board.

(2) The sexual assault victim assistance fund may receive state general fund appropriations, gifts, grants, federal funds, or other public or private funds or donations. Any federal matching funds received by the board or the crime victims' compensation fund for sexual assault victim assistance payments shall be deposited into the sexual assault victim assistance fund.

(3) Any unencumbered or unallocated balances in the sexual assault victim assistance fund shall be invested as provided in KRS 42.500(9). Any income earned from investment, along with the unallocated or unencumbered balances in the fund, shall not lapse and shall be deemed a trust and agency account available solely for the purposes specified in subsection (1) of this section.

(4) (a) For the purposes of this section, a children's advocacy center is a center as defined in KRS 620.020 that operates consistent with administrative regulations promulgated by the Cabinet for Families and Children and the Cabinet for Health Services.

(b) Upon receipt of a completed original claim form supplied by the board and itemized bill for a child sexual abuse medical examination performed at a children's advocacy center, the board shall reimburse the children's advocacy center for actual costs up to but not exceeding the amount of reimbursement established through administrative regulation promulgated by the Department for Medicaid Services.

(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation as proof that the medical examination was performed.

(5) If sexual assault victim assistance funds are insufficient to pay claims under subsection (4) of this section or Section 2 of this Act, payment shall be made from the Crime Victims' Compensation Fund.

Section 2. KRS 216B.400 is amended to read as follows:

(1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his inability to pay for services to be rendered by the hospital.

(2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064, and 531.310.

(3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.

(4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported

victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include but not be limited to:

(a) Basic treatment and evidence gathering services; and

(b) Laboratory~~[cultures and]~~ tests, as appropriate.

(5) Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling ***shall***~~[will]~~ not include abortion counseling or referral information.

(6) Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.

(7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

(8) ***(a)*** The examinations provided in accordance with this section shall be paid for by the ***Crime Victims' Compensation Board***~~[Office of the Attorney General]~~ at a rate to be determined by the~~[Attorney General by]~~ administrative regulation ***promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707***.

(b) Upon receipt of a completed original claim form supplied by the board and itemized billing for a forensic sexual assault examination, the board~~[The state]~~ shall reimburse the hospital or sexual assault examination facility, and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the ***board***~~[Office of the Attorney General]~~ pursuant to KRS Chapter 13A.~~[No charge shall be made to the victim for these examinations, either by the hospital, the sexual assault examination facility, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.]~~ Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.

(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section, however the board may require additional documentation or proof that the forensic medical examination was performed.

(9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

Section 3. Whereas it is imperative that the provisions of this Act become effective immediately to continue sexual assault examination services, an emergency is declared to exist and this Act takes effect upon its passage and signature of the Governor or upon its otherwise becoming a law.

Approved April 7, 2004

CHAPTER 74

(SB 109)

AN ACT relating to factory-built housing.

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

Section 1. KRS 227.550 is amended to read as follows:

As used in this section to KRS 227.660, 227.990, and 227.992, unless the context requires a different definition:

(1) "Board" means the Manufactured Home Certification and Licensure Board or the Recreational Vehicle Certification and Licensure Board.

(2) "***Seal" means the U.S. Department of Housing and Urban Development seal for manufactured homes and the Class A Seal for recreational vehicles***~~[Class A seal" means a device or insignia issued by the office to~~

~~indicate compliance with the standards, rules, and regulations established by the office or the board for recreational vehicles~~].

(3) "Class B***1*** Seal" ***and "Class B2 Seal" mean seals*** ~~[means a seal]~~ issued pursuant to subsection (3) of KRS 227.600.

(4) "***Retailer***~~[Dealer]~~" means any person, firm, or corporation, who sells or offers for sale ***two (2)***~~[three (3)]~~ or more manufactured homes, mobile homes, or recreational vehicles in any consecutive twelve (12) month period. The term "***retailer***~~[dealer]~~" shall not include:

(a) A manufacturer, as defined in this section;

(b) Any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to the disposition of its own repossessed manufactured housing; or

(c) A licensed real estate agent who acts as a negotiator between an owner and a prospective purchaser and does not acquire ownership or possession ***of manufactured homes*** for resale purposes~~[of three (3) or more manufactured homes in any consecutive twelve (12) month period]~~.

(5) "Established place of business" means a fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a ***retailer***~~[dealer]~~, which shall include the books, records, files, and equipment necessary to properly conduct such business, or a building having sufficient space therein in which the functional duties of a ***retailer***~~[dealer]~~ may be performed. The place of business shall not consist of a residence, tent, temporary stand, or open lot. It shall display a suitable sign identifying the ***retailer***~~[dealer]~~ and his business.

(6) "Federal act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder.

(7) "Manufactured home" means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976, and designed to be used as a single-family residential dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The manufactured home may also be used as a place of business, profession, or trade by the owner, the lessee, or the assigns of the owner or lessee and may comprise an integral unit or condominium structure. Buildings the construction of which is not preempted by the federal act are subject to building code requirements of KRS Chapter 198B.

(8) "***Factory-built***~~[Manufactured]~~ housing" means manufactured homes, mobile homes, recreational vehicles, ***or*** mobile office~~[or commercial]~~ units~~[, add-a rooms, or cabanas]~~.

(9) "Manufacturer" means any person who manufactures manufactured homes or recreational vehicles and sells to Kentucky ***retailers***~~[dealers]~~.

(10) "Mobile home" means a ***factory-built*** structure manufactured prior to June 15, 1976, which was not required to be constructed in accordance with the federal act~~[, which is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure]~~.

(11) "Office" means the office of the state fire marshal.

(12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. It shall include recreational vehicles which are regulated as to length, width, and registration by KRS Chapter 186. The basic entities are: travel trailer, camping trailer, truck camper, motor home, and park vehicle.

(a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred

twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units, or fixtures) and bath and toilet rooms.

(b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

(c) Truck campers: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.

(d) Park vehicle: A vehicle which:

1. Is built on a single chassis mounted on wheels;

2. Is primarily designed as temporary living quarters for seasonal or destination camping and which may be connected to utilities necessary for operation of installed fixtures and appliances;

3. Has a gross trailer area not exceeding four hundred (400) square feet in the set-up mode;

4. Has a gross trailer area not less than two hundred forty (240) square feet and is certified by the manufacturer as complying with ANSI A119.5, Park Vehicles.

(e) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(13) "Secretary" means the Secretary of the Federal Department of Housing and Urban Development.

(14) "ANSI" means the American National Standards Institute.

Section 2. KRS 227.555 is amended to read as follows:

(1) Every manufactured or mobile home as defined in KRS 227.550 shall have:

(a) At least one (1) working smoke detector located inside the home near the bedroom areas on each floor level; and

(b) At least two (2) operable means of egress, if the home was originally equipped with at least two (2) means.

(2) The Department of Housing, Buildings and Construction, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, shall design and cause to be placed:

(a) At each vehicle entrance to a ***manufactured*** ~~[mobile]~~ home park ***or community*** as defined in KRS 219.320, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section; and

(b) In each county clerk's office, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section.

(3) No public servant with the authority to issue a citation shall enter a manufactured or mobile home solely for the purpose of determining whether or not the manufactured or mobile home is in compliance with this section.

(4) No ordinance contrary to subsections (1) and (3) of this section may be enacted by any unit of local government, and the provisions of subsections (1) and (3) shall supersede any local ordinance to the contrary. The provisions of this subsection shall not apply to any city which has adopted or may in the future adopt the Uniform Residential Landlord and Tenant Act under KRS Chapter 383.

(5) The owners of manufactured homes and mobile homes located within a ***manufactured*** ~~[mobile]~~ home park ***or community*** which do not comply with subsection (1) of this section shall be responsible for the correction of any violation.

(6) Any person who violates subsection (1) of this section shall be guilty of a violation.

Section 3. KRS 227.560 is amended to read as follows:

(1) There is hereby created the Manufactured Home Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to ***retailers and shall certify installers***~~[dealers]~~.

(2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for Public Health, or their designees, and seven (7) citizens of the Commonwealth appointed by the Governor, which shall include three (3) manufactured or mobile home ***retailers***~~[dealers]~~, one (1) certified manufactured or mobile home installer, and three (3) members who shall have no interest in the industry to be regulated.

(3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for Public Health shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his or her successor is appointed and has qualified.

(4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years, and three (3) to serve for four (4) years. In the initial appointment of the certified manufactured or mobile home installer to the board, the Governor shall designate the member to serve for a term expiring September 1, 2004.

(5) ***All members appointed from the manufactured housing industry shall be required to remain licensees of the office during their term and are subject to removal for chronic absenteeism.***

(6) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.

(7)~~[(6)]~~ The chairman of the board shall be elected by the board. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.

(8)~~[(7)]~~ Each appointed member shall be entitled to fifty dollars ($50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.

(9)~~[(8)]~~ The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.

(10)~~[(9)]~~ All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the office and shall function under the supervision of the administrative head of the office.

Section 4. KRS 227.565 is amended to read as follows:

(1) There is hereby created the Recreational Vehicle Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to ***retailers***~~[dealers]~~.

(2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for Public Health, or their designees, and six (6) citizens of the Commonwealth appointed by the Governor, which shall include one (1) manufacturer of recreational vehicles and two (2) recreational vehicle ***retailers***~~[dealers]~~, and three (3) members who shall have no interest in the industry to be regulated.

(3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for Public Health shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his successor is appointed and has qualified.

(4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years, and three (3) to serve for four (4) years.

(5) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.

(6) The chairman of the board shall be the state fire marshal. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.

(7) Each appointed member shall be entitled to fifty dollars ($50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.

(8) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.

(9) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the office and shall function under the supervision of the administrative head of the office.

Section 5. KRS 227.570 is amended to read as follows:

(1) The office shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in mobile homes and for recreational vehicles as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board or the Recreational Vehicle Certification and Licensure Board.

(2) The office shall enforce such standards and requirements for the body and frame design, construction, and installation of mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board. If any part of 1976 Ky. Acts ch. 136 conflicts with Title 6 of the Federal Housing and Community Development Act of 1974, the federal act shall take precedence.

(3) ***All***~~[New]~~ installations of manufactured homes and mobile homes shall be ***performed by an installer certified under the provisions of Section 3 of this Act*** in accordance with the manufacturer's instructions***, if available,*** or ANSI 225.1, Manufactured Home Installations.

Section 6. KRS 227.590 is amended to read as follows:

(1) The board shall make and the office shall enforce rules and regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660 and to carry out their responsibilities as a state administrative agency for the enforcement and administration of the federal act.

(2) At least thirty (30) days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in subsection (5) of this section the office shall mail to all manufacturers possessing valid certificates of acceptability and ***retailers***~~[dealers]~~ possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner.

(3) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.

(4) Notwithstanding the provisions of KRS 227.550 to 227.660, the board shall have the authority to promulgate rules and regulations exempting manufacturers and ***retailers***~~[dealers]~~ from the provisions of KRS 227.550 to 227.660 when manufactured homes, mobile homes, and recreational vehicles are brought into this state for exhibition only.

(5) All rules, regulations, codes, fees, and charges adopted by the board pursuant to KRS 227.550 to 227.660 shall be prepared and filed in accordance with KRS Chapter 13A.

(6) The board shall have the authority to promulgate rules and regulations to issue temporary licenses, not to exceed thirty (30) days, to out-of-state ***retailers***~~[dealers]~~ for the purpose of participating in manufactured home and recreational vehicle shows in the Commonwealth of Kentucky.

Section 7. KRS 227.600 is amended to read as follows:

(1) No manufacturer who has received a certificate of acceptability from the office may sell or offer for sale in this state any recreational vehicles unless they bear a seal of approval issued by and purchased from the office.

(2) Seals issued by the office shall be numbered and shall be affixed by the manufacturer to the recreational vehicle in a conspicuous place.

(3) Any ***retailer***~~[dealer]~~ who has acquired a ***previously-owned***~~[used]~~ manufactured home, mobile home, or recreational vehicle without a seal shall apply to the office for ***the appropriate***~~[a Class B]~~ seal by submitting an affidavit that the unit has been brought up to or meets reasonable standards established by the board for ***previously-owned***~~[used]~~ manufactured homes, mobile homes, or recreational vehicles. Those manufactured homes or mobile homes taken in trade must be reinspected and certified. A numbered Class B***1*** Seal shall be affixed by the ***retailer***~~[dealer]~~ to the unit prior to sale. A seal will not be required if such ***retailer***~~[dealer]~~ submits an affidavit that the unit will not be resold for use as such by the public. A ***retailer***~~[dealer]~~ shall not transport or install a manufactured or mobile home which is to be used for residential purposes which does not have a~~[Class A or]~~ Class B***1*** Seal.

(4) The owner of any manufactured home or mobile home which is not covered by the federal act or a recreational vehicle purchased in another state and not bearing a seal of approval shall purchase a seal from the office. Application to purchase a seal of approval shall be made to the office or other person or agency authorized by the state fire marshal.

(5) The office shall make available suitable forms for application for seals of approval for new and ***previously-owned***~~[used]~~ recreational vehicles and for ***previously-owned***~~[used]~~ manufactured homes or mobile homes which are not covered by the federal act and recreational vehicles.

(6) The clerk of the county in which a manufactured home, mobile home, or recreational vehicle is sought to be registered after June 1, 1976, which was purchased out of Kentucky, shall require production of proof of purchase of a seal of approval as provided in subsection (4) of this section before registering or issuing a license for any manufactured home, mobile home, or recreational vehicle.

Section 8. KRS 227.610 is amended to read as follows:

The office shall***, after approval by the board,*** license ***retailers***~~[dealers]~~ under the provisions of KRS 227.550 to 227.660. The office may make the issuance of a license contingent upon the applicant's chief managing officer passing a test administered by the office. ***Before issuing a license, the office shall require proof of liability insurance which shall name the office in the certificate of insurance, and the license shall be null and void if there is a lapse of coverage in insurance.***

Section 9. KRS 227.620 is amended to read as follows:

(1) No ***retailer***~~[dealer]~~ shall engage in business as such in this state without a license therefor as provided in KRS 227.550 to 227.660.

(2) Application for license shall be made to the ***board***~~[office]~~ at such time, in such form and contain such information as the ***board***~~[office]~~ shall require and shall be accompanied by the required fee. The ***board***~~[office]~~ may require in such application, or otherwise, such information as it deems commensurate with the safeguarding of the public interest in the locality in which said applicant proposes to engage in business, all of which may be considered by the ***board***~~[office]~~ in determining the fitness of said applicant to engage in business as set forth in KRS 227.550 to 227.660.

(3) All licenses shall be granted or refused within thirty (30) days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee for such calendar year or part thereof shall be established by the board, subject to the following maximums:

(a) For manufacturers a "certificate of acceptability" shall be subject to a maximum of five hundred dollars ($500).

(b) For ***retailers***~~[dealers]~~ the maximum license fee shall be two hundred fifty dollars ($250) for each established place of business.

(c) The fee for a "Class A Seal" or a "Class B Seal" ***for recreational vehicles*** shall be established by the board subject to a maximum of twenty-five dollars ($25) per seal.

(d) ***The fee for a "Class B1 Seal" and "Class B2 Seal" for manufactured and mobile homes shall be established by the board subject to a maximum of twenty-five dollars ($25) per seal.***

(e) The office may establish a monitoring inspection fee in an amount established by the secretary. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in this state for each manufactured home produced by the manufacturer in this state. The monitoring inspection fee shall be paid by the manufacturer to the secretary or the secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the states approved and conditionally approved by the secretary based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, ***retailer***~~[dealer]~~, or purchaser in that state, and the extent of participation of the state in the joint team monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974***, as amended***.

(5) All revenues raised through the provisions of subsections (4)(a), (b), and (c), and funds paid to the state by the secretary under the provisions of subsection (4)(d) of this section shall be deposited in a trust and agency fund and shall be used solely for the purpose of carrying out the provisions of KRS 227.550 to 227.660 and other departmental responsibilities. No amount of such trust and agency fund shall lapse at the end of any fiscal year.

(6) The licenses of ***retailers***~~[dealers]~~ shall specify the location of the established place of business and must be conspicuously displayed there. In case such location be changed, ***the retailer shall notify the office of any change of location, and*** the office shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality ***or to a county which is not adjacent to the county where the business is located*** shall require a new license.

(7) Every ***retailer***~~[dealer]~~ licensed in accordance with the provisions of this section shall make reports to the office at such intervals and showing such information as the office may require.

(8) Each manufacturer, distributor of manufactured homes or mobile homes, and ***retailer***~~[dealer]~~ of manufactured or mobile homes shall establish and maintain such records, make such reports, and provide such information as the office or the secretary may reasonably require to be able to determine whether such manufacturer, distributor, or ***retailer***~~[dealer]~~ has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act and shall, upon request of a person duly designated by the office or secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or ***retailer***~~[dealer]~~ has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act.

Section 10. KRS 227.630 is amended to read as follows:

(1) A license***, certification,*** or certificate of acceptability may be denied, suspended, or revoked on the following grounds:

(a) A showing of insolvency in a court of competent jurisdiction;

(b) Material misstatement in application for license***, certification,*** or certificate of acceptability;

(c) Willful failure to comply with any provisions of KRS 227.550 to 227.660 or any rule or regulation promulgated by the board under KRS 227.550 to 227.660;

(d) Willfully defrauding any buyer;

(e) Willful failure to perform any written agreement with any buyer or ***retailer***~~[dealer]~~;

(f) Failure to have or to maintain an established place of business;

(g) Failure to furnish or maintain the required insurance;

(h) Making a fraudulent sale, transaction, or repossession;

(i) Employment of fraudulent devices, methods, or practices in connection with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(j) Failure by a ***retailer***~~[dealer]~~ to put the title to a manufactured home, mobile home, or recreational vehicle in his name after said ***retailer***~~[dealer]~~ has acquired ownership of the manufactured home, mobile home, or recreational vehicle by trade or otherwise;

(k) Violation of any law relating to the sale or financing of manufactured homes, mobile homes, or recreational vehicles.

(2) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for any or all of his ***or her salespersons***~~[salesmen]~~ while acting as his agent while the said agent is acting within the scope of his authority.

(3) Upon proceedings for the suspension of a license***, certification,*** or certificate of acceptability for any of the violations enumerated in KRS 227.550 to 227.660, the licensee or holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty dollars ($50) per day. Payments in lieu of suspension collected by the board shall be deposited in the State Treasury and credited to the general expenditure fund.

Section 11. KRS 227.640 is amended to read as follows:

(1) The ***board***~~[state fire marshal]~~ may deny the application for a license***, certification,*** or certificate of acceptability within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.

(2) No license***, certification,*** or certificate of acceptability shall be suspended or revoked by the ***board***~~[state fire marshal]~~ unless the licensee or certificate holder is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

(3) Any manufacturer***, certified installer,*** or licensed ***retailer***~~[dealer]~~ who violates or fails to comply with KRS 227.550 to 227.660 or any administrative regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation, if it is correctable, within twenty (20) days. Should the manufacturer***, certified installer,*** or ***retailer***~~[dealer]~~ fail to make the necessary corrections within the specified time or if the violation is not correctable, the ***board***~~[state fire marshal]~~ may, after notice and hearing in accordance with KRS Chapter 13B, suspend or revoke any certificate of acceptability***, certification,*** or license if it finds that:

(a) The manufacturer***, certified installer,*** or ***retailer***~~[dealer]~~ has failed to pay the fees authorized by KRS 227.550 to 227.660; or that

(b) The manufacturer***, certified installer,*** or ***retailer***~~[dealer]~~, either knowingly or without the exercise of due care to prevent the same, has violated any provision of KRS 227.550 to 227.660 or any administrative regulation or order lawfully made pursuant to and within the authority of KRS 227.550 to 227.660; or that

(c) The manufacturer has shipped or imported into this state a manufactured home, mobile home, or recreational vehicle to any person other than to a duly licensed ***retailer***~~[dealer]~~.

The office shall set out, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, and shall provide for a dispute resolution process which may be used prior to a formal hearing under KRS Chapter 13B. The dispute resolution process shall be nonbinding on the licensee, certified installer, or manufacturer and shall be conducted after application for a KRS Chapter 13B hearing, but prior to the convening of the KRS Chapter 13B hearing.

(4) Any person aggrieved by any final order of the state fire marshal may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 12. KRS 227.650 is amended to read as follows:

(1) The office is empowered to inspect all mobile homes which are not covered by the federal act and recreational vehicles for which it has issued a seal of approval.

(2) The office may establish and require such training programs in the concept, techniques, and inspection of manufactured homes, mobile homes, and recreational vehicles for the personnel of local governments, as the office considers necessary.

(3) The staff of the office, upon showing proper credentials and in the discharge of their duties pursuant to KRS 227.550 to 227.660 or the federal act, is authorized with the consent of the manufacturer or by proper warrant to enter and inspect all factories, warehouses, or establishments in this state in which manufactured homes are manufactured ***or stored***.

SECTION 13. A NEW SECTION OF KRS 227.550 TO 227.650 IS CREATED TO READ AS FOLLOWS:

(1) No person shall transport into the Commonwealth of Kentucky any previously-owned manufactured or mobile home for the purpose of resale or use as a dwelling in the Commonwealth of Kentucky unless the previously-owned manufactured or mobile home has a B1 Seal attached to it prior to resale or use as a dwelling. The application and certification procedures for the attachment of the B1 Seal prior to the resale or occupancy of the manufactured or mobile home shall be set out by the office through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. Nothing in this section shall require a person who owns a manufactured or mobile home in another state and who transports that manufactured or mobile home into the Commonwealth of Kentucky to use as that person's dwelling to obtain a Class B seal.

(2) Except for manufactured or mobile homes installed within the Commonwealth of Kentucky before the effective date of this Act, no person shall sell, lease, rent, or furnish for use as a dwelling in the Commonwealth of Kentucky any previously-owned manufactured or mobile home that does not bear a B1 Seal and which is not installed in compliance with the manufacturer's instructions, if available, or ANSI 225.1, Manufactured Home Installations.

Approved April 7, 2004

CHAPTER 75

(SB 246)

AN ACT relating to construction of certain electric transmission lines.

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

Section 1. KRS 278.020 is amended to read as follows:

(1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) ***For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not***

be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

(a) The replacement or upgrading of any existing electric transmission line; or

(b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or

(c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.

(3) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(4)~~[(3)]~~ No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(5)~~[(4)]~~ No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(6)~~[(5)]~~ No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

(7)~~[(6)]~~ Subsection ***(6)***~~[(5)]~~ of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection ***(6)***~~[(5)]~~ of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.

(8) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.

(9) ~~[(7)]~~ If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Section 2. KRS 278.516 is amended to read as follows:

(1) The legislature finds and determines that:

(a) Small telephone utilities lack the resources to fully participate in the existing regulatory processes, particularly under traditional rate of return and certificate of public convenience and necessity regulation;

(b) Regulation, if not tailored specifically to the needs of small telephone utilities, can retard the growth and development of small telephone utilities by requiring the expenditure of excessive time and money responding to and addressing regulatory processes instead of devoting those resources to customer service and more productive business concerns and issues; and

(c) It is in the public interest to provide regulatory flexibility to small telephone utilities to better enable them to adjust to the competition and innovation that has come and is coming to the telecommunications industry as found and determined by the legislature at KRS 278.512(1).

(2) In addition to the definitions set forth at KRS 278.010, the following definitions shall apply to this section:

(a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e) except that it includes local exchange carriers only;

(b) "Local exchange carrier" means a traditional wireline telephone utility which provides its subscribers with access to the national public switched telephone network;

(c) "Traditional wireline telephone utility" means one whose delivery of its telephone utility services is characterized by the predominant use of wire or wireline connections carrying communications transmissions between the subscriber of the utility and the national public switched telephone network;

(d) "Small telephone utility" means a local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky;

(e) "Largest telephone utility" means the local exchange carrier providing telephone utility service in Kentucky and having the greatest number of access lines in Kentucky;

(f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020***(6)*** ~~[(5)]~~, with that telephone utility shall be counted;

(g) "GDP" means the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce;

(h) "Annual percent change in the GDP" means, for any given calendar year, the annul percentage change in the GDP as it is calculated by the Bureau of Economic Analysis of the United States Department of Commerce;

(i) "Basic business rate" and "basic residential rate" mean the total rates or charges which must be paid by a business or residential subscriber, respectively, to a local exchange carrier in order to receive, outside

of a standard metropolitan statistical area, telephone utility service within a specified geographic area for local calling and for which tariffed rates or charges are assessed, regardless of the amount of use of local calling;

(j) "Standard metropolitan statistical area" means any area in Kentucky designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3) and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of Management and Budget of the Executive Office of the President of the United States; provided, however, that for purposes of this section, "standard metropolitan statistical area" shall include only the two (2) largest, as measured by population, standard metropolitan statistical areas, regardless of whether that area is located wholly or partially in Kentucky;

(k) "Basic business service" or "basic residential service" means the service for which basic business rates or basic residential rates are charged;

(l) "Average basic business or residential rate, including zone charges," means the total revenues which should be produced by the imposition of those rates or charges divided by the number of access lines to which those rates or charges are applicable;

(m) "Zone charges" mean mileage or zone charges and are the charges assessed by a telephone utility on the basis of a subscriber's distance from a central office in order that the subscriber may receive basic business or residential services;

(n) "Subscriber" means the person or entity legally and financially responsible for the bill rendered by a telephone utility for its services;

(o) "Intrastate access charges" mean the charges assessed for use of the telecommunications facilities of one telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating and terminating within Kentucky;

(p) "Interstate access charges" mean the charges assessed for use of the telecommunications facilities of one (1) telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating or terminating, but not both, in Kentucky; and

(q) "Pic charges" are charges assessed by a local exchange carrier in order to implement a change in a subscriber's long distance carrier.

(3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted. However, in no event shall a small telephone utility so adjust:

1. Its basic business rate, including zone charges, if the resulting average basic business rate, including zone charges, would thereby exceed the average basic business rate, including zone charges, of the largest telephone utility;

2. Its basic residential rate, including zone charges, if the resulting average basic residential rate would thereby exceed the average basic residential rate including zone charges, of the largest telephone utility; or

3. If its average basic business rate, including zone charges, its average basic residential rate, including zone charges, or its installation charges for basic business or basic residential services would be increased by more than twenty percent (20%).

(b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:

1. The GDP for the preceding two (2) calendar years;

2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and

3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.

(c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.

(4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:

(a) Its basic business rate;

(b) Its basic residential rate;

(c) Its zone charges;

(d) Its installation charges for basic business or basic residential services;

(e) Its access charges; or

(f) Its pic charges,

without regard to the effect on its revenues, by filing its proposed rates, charges, or tariffs with the commission and by notifying its subscribers, both at least thirty (30) calendar days prior to the effective date of its proposed rates, charges, or tariffs.

(5) A small telephone utility which has elected to be regulated pursuant to this section shall not:

(a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or

(b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

The small telephone utility may decrease its intrastate access charges or intrastate pic charges to any level without restriction. Adjustments to intrastate access charge rates or intrastate pic charges shall be effective thirty (30) calendar days following the filing of access charge tariffs or pic charge tariffs with the commission.

(6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).

(7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020***(4)***~~[(3)]~~ or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.

(8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of

equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction project denied approval by the commission or not submitted to the commission for approval may be excluded from the small utility's rate base for rate making purposes if the cost of construction exceeded one million dollars ($1,000,000) or five percent (5%) of the value of the small telephone utility's property as reflected in the utility's most recent annual report filed with the commission.

Approved April 7, 2004

CHAPTER 76

(HB 373)

AN ACT relating to the taxation of abandoned urban property.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 92 IS CREATED TO READ AS FOLLOWS:

(1) Any city of the second to the sixth class which finds and declares that there exists abandoned urban property as defined in Section 2 of this Act within the city, or which finds that there exists blighted or deteriorated property pursuant to KRS 99.705 to 99.730, may levy a separate rate of taxation on abandoned urban property pursuant to Section 2 of this Act.

(2) Prior to levying a tax upon abandoned urban property, the legislative body of a city of the second to the sixth class shall delegate to the vacant properties review commission, if established pursuant to Section 4 of this Act, or another department or agency of city government, the responsibility of determining which properties within the city are abandoned urban properties. A list of abandoned urban properties shall be furnished to the county property valuation administrator prior to the date fixed for the annual assessment of real property within the county. If a property classified as abandoned urban property is repaired, rehabilitated, or otherwise returned to productive use, the owner shall notify the city which shall, if it finds the property is no longer abandoned urban property, notify the property valuation administrator to strike the property from the list of abandoned urban properties.

Section 2. KRS 132.012 is amended to read as follows:

As used in this section and in ***Section 1 of this Act and*** KRS 91.285, unless the context otherwise requires:

(1) "Abandoned urban property" means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly developed urban area which has been vacant or unimproved for a period of at least one (1) year and which:

(a) Because it is dilapidated, unsanitary, unsafe, vermin infested, or otherwise dangerous to the safety of persons, it is unfit for its intended use; or

(b) By reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris, or has become infested with rodents or other vermin; or

(c) Has been tax delinquent for a period of at least three (3) years.

(2) For purposes of local taxation in cities of ***any***~~[the first]~~ class or consolidated local governments, there shall be a classification of real property known as abandoned urban property. The legislative body of a city of ***any***~~[the first]~~ class***, county containing a city of the first class,*** or consolidated local government may levy a rate of taxation on abandoned urban property higher than the prevailing rate of taxation on other real property in the city***, county containing a city of the first class,*** or consolidated local government. The limitation upon tax rates established by KRS 132.027 shall not apply to the rate of taxation on abandoned urban property.

Section 3. KRS 99.705 is amended to read as follows:

Unless the context otherwise requires:

(1) "Blighted" or "deteriorated" property means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood:

(a) Which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with ***a***~~[the]~~ city ***of any class***, or in counties containing a city of the first class or consolidated local government, with the housing, building, plumbing, fire, or related codes;

(b) Which because of physical condition, use, or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures;

(c) Which because it is dilapidated, unsanitary, unsafe, vermin-infested, or lacking in the facilities and equipment required by the housing code of ***a***~~[the]~~ city or county containing a city of the first class or consolidated local government, has been designated by the department responsible for enforcement of the code as unfit for human habitation;

(d) Which is a fire hazard, or is otherwise dangerous to the safety of persons or property;

(e) From which the utilities, plumbing, heating, sewerage, or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use;

(f) Which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin;

(g) Which has been tax delinquent for a period of at least three (3) years; or

(h) Which has not been rehabilitated within the time constraints placed upon the owner by the appropriate code enforcement agency.

(2) "Redevelopment" means the planning or replanning, design or redesign, acquisition, clearance, development, and disposal or any combination of these, of a property in the preparation of such property for residential and related uses, as may be appropriate or necessary.

(3) "Residential and related use" shall mean residential property for sale or rental and related uses; including but not limited to park and recreation areas, neighborhood community service, and neighborhood parking lots.

(4) "Vacant property review commission" means a commission established by ordinance to review vacant properties to make a written determination of blight and deterioration.

Section 4. KRS 99.710 is amended to read as follows:

(1) If the legislative body of a consolidated local government, a city ***of any class***, or a county containing a city of the first class finds and declares that there exists in the consolidated local government, city ***of any class***, or county containing a city of the first class blighted or deteriorated properties and that there is need in the city or county for the exercise of powers, functions, and duties conferred by KRS 99.705 to 99.730, the legislative body may adopt the provisions of KRS 99.705 to 99.730 by ordinance.

(2) The ordinance adopting the provisions of KRS 99.705 to 99.730 shall also establish a vacant property review commission which shall certify properties as blighted or deteriorated to the legislative body. The ordinance shall specify the duties of, the number of members that will serve on, the requirements of membership, and the makeup of the commission. Members shall be appointed by the mayor and approved by the legislative body. No officer or employee of the consolidated local government, city ***of any class***, or county containing a city of the first class whose duties include enforcement of housing, building, plumbing, fire, or related codes shall be appointed to the commission.

Section 5. KRS 99.715 is amended to read as follows:

A city ***of any class,***~~[or]~~ county containing a city of the first class***, or consolidated local government*** may acquire by, eminent domain pursuant to KRS Chapter 416, any property determined to be blighted or deteriorated pursuant to KRS 99.705 to 99.730, and shall have the power to hold, clear, manage, or dispose of property so acquired for residential and related use, pursuant to the provisions of KRS 99.705 to 99.730.

Section 6. KRS 99.720 is amended to read as follows:

(1) The legislative body shall not institute eminent domain proceedings pursuant to KRS 99.705 to 99.730 unless the commission has certified that the property is blighted or deteriorated. A property which has been referred to the commission by a city agency ***of any class of city***, or by an agency in a county containing a city of the first

class or consolidated local government, as blighted or deteriorated may only be certified to the legislative body as blighted or deteriorated after the commission has determined:

(a) That the owner of the property or designated agent has been sent an order by the appropriate city, consolidated local government, or county agency to eliminate the conditions which are in violation of local codes or law;

(b) That the property is vacant;

(c) That the property is blighted and deteriorated;

(d) That the commission has notified the property owner or designated agent that the property has been determined to be blighted or deteriorated and the time period for correction of such condition has expired and the property owner or agent has failed to comply with the notice; and

(e) That, in ***cities of any class,*** counties containing a city of the first class, ***or*** consolidated local governments~~[, and cities]~~ that are within a planning unit established pursuant to KRS Chapter 100, the planning commission has determined that the reuse of the property for residential and related use is in keeping with the comprehensive plan.

(2) The findings required by subsection (1) of this section shall be in writing and included in the report to the legislative body.

(3) The commission shall notify the owner of the property or a designated agent that a determination of blight or deterioration has been made and that failure to eliminate the conditions causing the blight shall render the property subject to condemnation by the city, consolidated local government, or county under KRS 99.705 to 99.730. Notice shall be mailed to the owner or designated agent by certified mail, return receipt requested. However, if the address of the owner or a designated agent is unknown and cannot be ascertained by the commission in the exercise of reasonable diligence, copies of the notice shall be posted in a conspicuous place on the property affected. The written notice sent to the owner or his agent shall describe the conditions that render the property blighted and deteriorated, and shall demand abatement of the conditions within ninety (90) days of the receipt of such notice.

(4) An extension of the ninety (90) day time period may be granted by the commission if the owner or designated agent demonstrates that such period is insufficient to correct the conditions cited in the notice.

Section 7. KRS 99.725 is amended to read as follows:

The legislative body of the city ***of any class,***~~[or]~~ county containing a city of the first class***, or consolidated local government*** may institute eminent domain proceedings pursuant to KRS Chapter 416 against any property which has been certified as blighted or deteriorated by the commission if it finds:

(1) That such property has deteriorated to such an extent as to constitute a serious and growing menace to the public health, safety and welfare;

(2) That such property is likely to continue to deteriorate unless corrected;

(3) That the continued deterioration of such property may contribute to the blighting or deterioration of the area immediately surrounding the property; and

(4) That the owner of such property has failed to correct the deterioration of the property.

Section 8. KRS 99.730 is amended to read as follows:

No officer or employee of ***a*** ~~[the]~~ city ***of any class,*** ~~[or]~~ county containing a city of the first class**,** or consolidated local government, or of the vacant property review commission, who in the course of his or her duties is required to participate in the determination of property blight or deterioration or the issuance of notices on code violations which may lead to a determination of blight or deterioration, shall acquire any interest in any property declared to be blighted or deteriorated. If any such officer or employee owns or has financial interest, direct or indirect, in any property certified to be blighted or deteriorated, he or she shall immediately disclose, in writing, such interest to the commission and to the legislative body and such disclosure shall be entered in the minutes of the commission and of the legislative body. Failure to so disclose such interest shall constitute misconduct in office. No payment shall be made to any officer or employee for any property or interest therein acquired by the city ***of any class***, consolidated local government, or county containing a city of the first class from such officer or employee unless the amount of such payment is fixed by court order in eminent domain proceedings, or unless payment is unanimously approved by the legislative body.

Approved April 7, 2004

CHAPTER 77

(HB 48)

AN ACT relating to civil actions.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) An employer who provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of that employee or prospective employer, shall be immune from civil liability arising out of the disclosure unless the plaintiff in the civil action proves:

(a) That the employer disclosed the information knowing that it was false, with reckless disregard of whether it was true or false, or with intent to mislead the prospective employer; or

(b) That the disclosure of the information by the employer constitutes an unlawful discriminatory practice under KRS Chapter 344.

(2) This section does not create a new cause of action or substantive legal right against an employer.

(3) This section does not limit an employer's immunity from civil liability or defenses established in another section of the Kentucky Revised Statutes or available at common law.

Approved April 7, 2004

CHAPTER 78

(HB 413)

AN ACT making an appropriation for local government public safety and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section:

(a) "Local government" means a city, county, charter county, urban-county, or consolidated local government; and

(b) "Police department" means a police department created by a local government which employs one or more officers certified pursuant to KRS 15.380 to 15.404.

(2) In criminal cases a fee of twenty dollars ($20) shall be added to the costs imposed by KRS 23A.205 that the defendant is required to pay.

(3) The circuit clerk shall pay the funds from fees collected under this section to the Finance and Administration Cabinet pursuant to KRS 23A.215 for distribution as provided in subsection (5) of this section to local governments with police departments or local governments that contract for police services, and to counties with fiscal responsibilities for jails or the transporting of prisoners.

(4) All funds distributed to local governments shall be used for payment of expenses for operation of the local government's police department or contracted police services. All funds distributed to counties with fiscal responsibilities for jails or the transporting of prisoners shall be used for the payment of costs associated with the housing or transporting of prisoners.

(5) Payments shall be distributed quarterly by the Finance and Administration Cabinet beginning October 1, 2004, as follows:

(a) Thirty percent (30%) of the total shall be distributed equally to all local governments with police departments or that contract for police services;

(b) Fifty percent (50%) of the total shall be distributed to local governments with police departments or local governments that contract for police services on a per capita basis according to the number of certified police officers employed by the police department on July 1 each year or providing services to the local government pursuant to a contract on July 1 of each year. For purposes of this subsection, each local government that contracts for police services shall be considered to employ one (1) police officer for each sixty thousand dollars ($60,000) it expends during each fiscal year for police services under a written contract; and

(c) Twenty percent (20%) of the total shall be distributed equally to counties with fiscal responsibilities for jails or the transporting of prisoners.

(6) On or before August 1 of each year, the Justice Cabinet shall certify to the Finance and Administration Cabinet the number of certified police officers employed by each local government.

(7) On or before August 1 of each year, each local government contracting for police services shall certify to the Finance and Administration Cabinet the amount of money expended for police services under a written contract during the previous fiscal year.

(8) The Finance and Administration Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A deemed necessary for the administration of this section.

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

(1) For the purposes of this section:

(a) "Local government" means a city, county, charter county, urban-county, or consolidated local government; and

(b) "Police department" means a police department created by a local government which employs one or more officers certified pursuant to KRS 15.380 to 15.404.

(2) In criminal cases a fee of twenty dollars ($20) shall be added to the costs imposed by KRS 24A.175 that the defendant is required to pay.

(3) The circuit clerk shall pay the funds from fees collected under this section to the Finance and Administration Cabinet pursuant to KRS 24A.175 for distribution as provided in subsection (5) of this section to local governments with police departments or local governments that contract for police services, and to counties with fiscal responsibilities for jails or the transporting of prisoners.

(4) All funds distributed to local governments shall be used for payment of expenses for operation of the local government's police department or contracted police services. All funds distributed to counties with fiscal responsibilities for jails or the transporting of prisoners shall be used for the payment of costs associated with the housing or transporting of prisoners.

(5) Payments shall be distributed quarterly by the Finance and Administration Cabinet beginning October 1, 2004, as follows:

(a) Thirty percent (30%) of the total shall be distributed equally to all local governments with police departments or local governments that contract for police services; and

(b) Fifty percent (50%) of the total shall be distributed to local governments with police departments on a per capita basis according to the number of certified police officers employed by the police department on July 1 each year or providing services to the local government pursuant to a contract on July 1 of each year. For purposes of this subsection, each local government that contracts for police services shall be considered to employ one (1) police officer for each sixty thousand dollars ($60,000) it expends during each fiscal year for police services under a written contract;

(c) Twenty percent (20%) of the total shall be distributed equally to counties with fiscal responsibilities for jails or the transporting of prisoners.

(6) On or before August 1 of each year, the Justice Cabinet shall certify to the Finance and Administration Cabinet the number of certified police officers employed by each local government.

(7) On or before August 1 of each year, each local government contracting for police services shall certify to the Finance and Administration Cabinet the amount of money expended for police services under a written contract during the previous fiscal year.

(8) The Finance and Administration Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary for the administration of this section.

Section 3. KRS 42.409 is amended to read as follows:

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

(1) "State total personal income" means the measure of all income received by or on behalf of persons in the Commonwealth, as most recently published in the Survey of Current Business by the United States Department of Commerce, Bureau of Economic Analysis.

(2) "Estimated state total personal income" means the personal income figure used by the Governor's Office for Economic Analysis to generate final detailed revenue estimates.

(3) "Total revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended.

(4) "Anticipated total revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended.

(5) "Available revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

(6) "Anticipated available revenues" means final estimates of revenues, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

(7) "Total assessed value of property" means state total net assessed value of property for taxes due, as obtained from the Revenue Cabinet.

(8) "Per capita" means per unit of population, where population figures are the most recent available from the University of Louisville, Kentucky State Data Center.

(9) "Appropriation-supported debt service" means the amount of an appropriation identified to be expended for debt service purposes in the executive budget recommendation, and the amount of an appropriation expended for debt services in a completed fiscal year.

(10) "Appropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is appropriated by the General Assembly.

(11) "Nonappropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is not appropriated by the General Assembly.

(12) "Statutorily dedicated receipts" means revenues credited to the general fund and road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account, which are required by an enacted statute to be used for a specific purpose. Statutorily dedicated receipts include, but are not limited to, the following:

(a) Receipts credited to the general fund which are subject to~~[KRS 24A.191, KRS 24A.192,]~~ KRS 42.450 to 42.495, KRS 278.130 to 278.150, or KRS 350.139;

(b) Receipts credited to the road fund which are subject to KRS 175.505, KRS 177.320, KRS 177.365 to 177.369, KRS 177.9771 to 177.979, KRS 186.531, or KRS 186.535; and

(c) Receipts credited to a restricted agency fund account in accordance with any applicable statute.

(13) "True interest cost" means the bond yield according to issue price without a reduction for related administrative costs, and is the same figure as the arbitrage yield calculation described in the United States Tax Reform Act of 1986.

Section 4. The following KRS sections are repealed:

24A.190 Definitions for KRS 24A.191 to 24A.193.

24A.191 Computation of net court revenue and base court revenue.

24A.192 Return to cities and counties of net court revenue.

24A.193 Authority for administrative regulations.

Section 5. Whereas, local governments with police departments have sustained a significant loss of revenue with the fifty percent (50%) reduction in base court revenue in 2003, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 2004

CHAPTER 79

(HB 163)

AN ACT relating to school finance.

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

SECTION 1. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

As used in KRS 160.613 to 160.617:

(1) "Cabinet" means the Revenue Cabinet;

(2) "Communications service" shall have the same meaning as provided in KRS 139.195 but does not include:

(a) Prepaid calling services;

(b) Interstate telephone service, if the interstate charge is separately itemized for each call; and

(c) If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records.

(3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased.

(4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services.

(5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas.

Section 2. KRS 160.613 is amended to read as follows:

(1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the ***district***~~[county]~~, of ***utility services***~~[telephonic and telegraphic communications services, electric power, water, and natural, artificial, and mixed gas. "Gross~~

~~receipts" includes all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of the above utilities~~], except that "gross receipts" shall not include amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production, and shall not include amounts received for furnishing any of the above utilities which are to be resold.

(2) ***If***[~~In the event that~~] any user of ***utility services***[~~telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas~~] purchases the ***utility services***[~~telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas~~] directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax[~~under the provisions of subsection (1) of this section~~], then the consumer, if ***the***[~~such~~] tax has been levied in ***the consumer's***[~~his~~] district, shall be liable for the tax and shall pay directly to the ***cabinet***[~~county finance officer~~], in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all ***utility services***[~~telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas~~] received by the tax rate levied under the provisions of this section.

[~~(3) "Gross cost" shall mean the total cost of the telephonic and telegraphic communications, electrical power, water, and natural, artificial, or mixed gas including the cost of the tangible personal property and any services associated with obtaining the telecommunication and telegraphic services or tangible personal property, such as gas, electricity, and water, regardless from whom purchased.~~

~~(4) The tax imposed by this section shall apply to mobile telecommunications services as defined in 4 U.S.C. sec. 124 only if the customer's place of primary use is within the jurisdictional boundaries of the taxing jurisdiction. The provisions of 4 U.S.C. secs. 116 to 126 are hereby adopted and incorporated by reference.~~

~~(5) If a customer believes that a tax, charge, fee, or assignment of place of primary use or taxing jurisdiction on a bill is incorrect, the customer shall notify the home service provider about the alleged error in writing. This notification shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider reasonably requires. Within sixty (60) days of receiving the customer's notification, the home service provider shall either correct the error and refund or credit all taxes, charges, and fees incorrectly charged to the customer within four (4) years of the customer's notification, or explain to the customer in writing how the bill was correct and why a refund or credit will not be made.~~

~~(6) A customer shall not have a cause of action against a home service provider for any erroneously collected taxes, charges, or fees until the customer has exhausted the procedure set forth in subsection (5) of this section.~~]

Section 3. KRS 160.614 is amended to read as follows:

(1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services in addition to the gross receipts derived from the furnishing of the ***utility*** services ***defined in Section 1 of this Act***[~~enumerated in KRS 160.613~~].

(2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services, in addition to the gross receipts derived from the furnishing of the ***utility*** services ***defined in Section 1 of this Act***[~~enumerated in KRS 160.613~~], if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable television services.

Section 4. KRS 160.615 is amended to read as follows:

(1) The school taxes authorized by ***Sections 2 and 3 of this Act***[~~KRS 160.613~~] shall be due and payable monthly and shall be remitted ***to the cabinet*** on or before the twentieth day of the next succeeding calendar month.

(2) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the cabinet in the form prescribed by the cabinet, together with any tax due.

(3) For purposes of facilitating the administration, payment or collection of the taxes levied by Sections 2 and 3 of this Act, the cabinet, in consultation with the impacted school district, may permit or require returns or tax payments for periods other than those prescribed in subsections (1) and (2) of this section.

(4) The cabinet may, upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the cabinet, extend the time for filing the return or paying the tax for a period not to exceed thirty (30) days.

(5) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.

SECTION 5. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

For purposes of administering the taxes authorized by Sections 2 and 3 of this Act relating to the sourcing of communications services and the rights of customers, the provisions of KRS 139.105(2), KRS 139.195, and KRS 139.775 shall apply.

SECTION 6. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

(1) The cabinet shall collect all taxes imposed by school districts pursuant to Sections 2 and 3 of this Act, and shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of these taxes as provided under KRS Chapters 131, 134, and 135, except as otherwise provided in KRS 160.613 to 160.617. The cabinet shall distribute the taxes collected to each school district imposing the tax on a monthly basis. Distributions shall be made in accordance with the district boundary information submitted to the cabinet pursuant to Section 9 of this Act, as modified by any adjustments or agreements made pursuant to the provisions of Section 7 of this Act.

(2) From each distribution, the cabinet shall deduct an amount which represents the proportionate share of the cabinet's actual operating and overhead expenses incurred in the collection and administration of the taxes not to exceed one percent (1%) of the amount collected. The cabinet shall report its actual expenses and the allocation of expenses among school districts to the Kentucky Board of Education on a quarterly basis.

(3) As soon as practicable after each return is received, the cabinet may examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet on behalf of the school district within two (2) years from the date prescribed by law for the filing of the return including any extensions granted, except as provided in this section. A notice of the assessment shall be mailed to the taxpayer.

(4) In the case of a failure to file a return or the filing of a fraudulent return, the excess may be assessed at any time.

SECTION 7. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

(1) If the cabinet determines that the allocation among districts as submitted by the taxpayer on the return varies from the school district boundary information submitted to the cabinet pursuant to Section 9 of this Act, the cabinet shall:

(a) Make a proposed administrative adjustment to correct the erroneous allocation going forward;

(b) Determine whether the erroneous allocation was used on prior returns and if it was, make a proposed administrative adjustment going back a maximum of one (1) year from the date the erroneous allocation was discovered; and

(c) Retain taxes collected and still on hand for distribution to the impacted districts that are related to the erroneous allocation until the proposed administrative adjustment becomes final.

(2) Within ten (10) days of the discovery of the erroneous allocation, the cabinet shall notify the taxpayer and the impacted school districts in writing of the allocation discrepancy, including the dollar amount at issue, the proposed administrative adjustment to be made, and the process for agreeing to or filing an exception to the proposed administrative adjustment.

(3) The proposed administrative adjustment shall become final upon the earlier of the receipt by the cabinet of written acceptance of the administrative adjustment by all impacted school districts or the expiration of forty-five (45) days from the date of the notice with no exception having been filed.

(4) (a) Exceptions to the proposed administrative adjustment shall be filed with the secretary of the cabinet, within forty-five (45) days from the date of the notice, and shall include a supporting statement setting forth the basis of the exception. A copy of any exception filed shall also be mailed to the impacted utility services provider and any other impacted school district.

(b) After the exception has been filed, the impacted school district may request a conference with the cabinet. The request shall be granted in writing stating the time and date of the conference. Other impacted school districts and the impacted utility services provider may also attend any conference. Additional conferences may be held upon mutual agreement.

(c) After considering the exceptions filed by the impacted school district, including any information provided during any conferences, a final administrative ruling shall be issued by the cabinet. The final administrative ruling shall be mailed to all impacted school districts as well as the impacted utility services provider.

(d) The impacted school district filing the exception may request in writing a final ruling at any time after filing exceptions and a supporting statement, and the cabinet shall issue the ruling within thirty (30) days after the request is received by the cabinet.

(e) After a final ruling has been issued, the school district may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the school district is located.

(5) The method and timing of the implementation of a final administrative ruling that requires a reallocation of previously distributed tax receipts shall be determined by agreement of the impacted school districts, provided that any agreement allowing for adjustments to be made over time in the future shall not extend beyond four (4) years.

(a) The cabinet shall, upon request of the impacted school districts, assist in the development of an agreement.

(b) An agreement that requires distribution changes that vary from the district boundary information shall be provided to the cabinet so that distributions can be made in accordance with the agreement.

(c) If the impacted school districts fail to reach an agreement regarding the reallocation of previously distributed tax receipts, the cabinet shall adjust distributions going forward for four (4) years so that at the expiration of four (4) years, the district that should have received the original distribution has recouped all of the funds distributed erroneously, and the district that erroneously received the funds has repaid all of the funds distributed erroneously.

SECTION 8. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

(1) Any utility service provider that has paid the utility gross receipts tax imposed by a school district pursuant to Sections 2 and 3 of this Act may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.

(2) A request for refund shall be in writing, and shall be made to the cabinet with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.

(3) Refunds shall be authorized by the cabinet, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.

(4) The cabinet shall make authorized refunds from current tax collections in its possession for the district. If sufficient funds are not available, the cabinet shall notify the school district and the school district shall make the refund.

(5) If the cabinet denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located.

SECTION 9. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

(1) The superintendent of schools in each school district levying the tax permitted by KRS 160.593 shall, on or before March 31, 2005 provide to the cabinet and to each entity providing utility services within the school district, the boundaries of the school district.

(2) If the boundaries reported to the cabinet and to each entity providing utility services within the school district change, the superintendent of schools shall report the boundary changes to the cabinet and to each entity providing utility services within the school district.

(3) The cabinet and entities providing utility services within the school district shall allocate tax payments among the various school districts imposing the taxes authorized by Sections 2 and 3 of this Act in accordance with the most recent boundary information provided by the superintendents, as adjusted by any agreements entered into pursuant to Section 7 of this Act. The cabinet and entities providing utility services within a school district shall not be responsible for nor subject to the imposition of penalties or interest relating to, distribution errors resulting from incorrect boundary information provided pursuant to this section, and may rely upon the most recent boundary information and any agreements entered into pursuant to Section 7 of this Act and provided by each superintendent as accurate.

(4) If there is a conflict regarding school district boundaries, the cabinet may, until the conflict is resolved, distribute the total tax revenues collected for the districts involved in the conflict proportionately to the districts based upon the average daily attendance in the districts for the previous school year.

SECTION 10. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

The uniform penalty provisions of KRS 131.180 shall apply to all taxes levied by school districts pursuant to Sections 2 and 3 of this Act.

SECTION 11. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provisions to the contrary, the secretary of the cabinet, in consultation with impacted school district, shall waive any penalty, but not interest, where it is shown to the satisfaction of the cabinet that the failure to file or pay timely is due to reasonable cause.

SECTION 12. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

The taxes collected by the cabinet pursuant to KRS 160.613 to 160.617 are remitted to the cabinet for administrative purposes only and shall remain the property of the local school districts levying the tax. The amounts so collected shall not be distributed, allocated, expended, or used in any manner except as provided in KRS 160.613 to 160.617.

Section 13. KRS 160.617 is amended to read as follows:

Notwithstanding the provisions of KRS 278.040(2), any utility ***services provider*** required to pay the tax authorized by KRS 160.613 may increase its rates in any ***school district***~~[county]~~ in which it is required to pay the school tax by three percent (3%). Any utility so increasing its rates shall separately state on the bills sent to its customers the amount of ***the***~~[such]~~ increase and shall identify ***the***~~[such]~~ amount as: "Rate increase for school tax."

Section 14. KRS 160.640 is amended to read as follows:

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633***, except the Revenue Cabinet,*** shall be required to secure a corporate surety bond in an amount to be set by the Kentucky Board of Education. The cost of the surety bond shall be considered a part of the cost of the administration of the school taxes authorized under KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633.

Section 15. KRS 160.648 is amended to read as follows:

(1) Any person, individual, or corporation required by the provisions of KRS 160.605 to 160.611~~[, 160.613 to 160.617,]~~ and 160.621 to 160.633 to file any return or report or furnish any information requested under the authority of KRS 160.605 to 160.611~~[, 160.613 to 160.617,]~~ and 160.621 to 160.633 who fails to file such return or report or furnish such information on or before the date required shall pay a penalty in the amount of ten dollars ($10) for each~~[such]~~ failure.

(2) Any person, individual, or corporation who fails to pay, on or before the due date, any school tax authorized by KRS 160.605 to 160.611~~[, 160.613 to 160.617,]~~ and 160.621 to 160.633 and levied by the district board of education shall pay a penalty of one percent (1%) per month of the amount of such tax past due until paid.

Section 16. KRS 160.520 is amended to read as follows:

The laws applying to penalties on and the collection of delinquent school taxes***, except the taxes imposed by KRS 160.613 to 160.617*** shall be the same as the general laws applying to penalties on and the collection of delinquent taxes of the taxing districts which embrace the various school districts.

Section 17. This Act takes effect July 1, 2005.

Approved April 7, 2004

CHAPTER 80

(SB 225)

AN ACT relating to certificates of deposit.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "financial institution" means a bank, trust company, savings and loan association, or credit union authorized by law to do business in this state.

(2) (a) A financial institution that issues a certificate of deposit that is subject to automatic renewal at maturity shall, upon automatic renewal, renew the certificate of deposit for a like term at the best available rate of interest as posted at the issuing financial institution for similarly issued certificates of like term.

(b) Any notice sent by the financial institution to the holder of a certificate of deposit subject to automatic renewal prior to maturity which notifies the holder of the holder's options upon renewal shall disclose that if the certificate of deposit automatically renews it will be renewed for a like term at the best available rate of interest as posted at the issuing financial institution for similarly issued certificates of like term.

(3) (a) Any violation of this section shall be an unfair, false, misleading, and deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.

(b) All of the remedies, powers, and duties provided for the Attorney General in KRS 367.190 to 367.300, and all of the penalties provided in KRS 367.990, pertaining to acts declared unlawful by KRS 367.170, shall apply to acts and practices declared unlawful in this section.

Approved April 7, 2004

CHAPTER 81

(HB 461)

AN ACT relating to electrical licensing and declaring an emergency.

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

Section 1. KRS 227.480 is amended to read as follows:

(1) A city, county, urban-county, or consolidated local government shall, according to the Uniform State Building Code as it pertains to the plan review and inspection responsibilities of local governments, require any person to obtain permits before commencing construction, alteration, or repairs of any electrical wiring, and require such inspection as it deems necessary for the safety of life and property.

(2) A city, county, urban-county, or consolidated local government or the state shall not issue a permit unless the applicant submits proof of being licensed ***as an electrical contractor*** under KRS 227A.010 to 227A.140 ***or of acting on behalf of a licensed electrical contractor***. However, the provisions of this subsection shall not apply to a homeowner or farmer who does construction, alteration, or repairs of any electrical wiring on his or her own premises ***or any other person exempt from licensing under KRS 227A.030. This subsection shall not apply to electrical work performed by the Commonwealth of Kentucky, a city, county, urban-county, or consolidated local government, or any subdivision thereof***.

(3) A city, county, urban-county, or consolidated local government shall appoint and may fix the compensation of city, county, urban-county, or consolidated local government electrical inspectors, and may by ordinance fix reasonable fees and establish other requirements for the conduct of electrical inspections within its boundaries. All electrical inspectors must be certified under KRS 227.489.

(4) Reasonable standards for the construction, alteration, and repair of any electrical wiring shall be those adopted in the Uniform State Building Code, as promulgated by the Board of Housing, Buildings and Construction, and shall have as a minimum standard the requirements of the National Electric Code. These standards shall be used by the electrical inspector in making his inspections.

Section 2. KRS 227A.010 is amended to read as follows:

As used in KRS 227A.010 to 227A.140, unless the context otherwise requires:

(1) "Authorized local licensing program" means any city, county, urban-county, charter county, or consolidated local government electrician and electrical contractor licensing program established by local ordinance for the purpose of licensing electrical workers. "Authorized local licensing program" shall include a licensing program established through a cooperative agreement between two (2) or more counties;

(2) "Committee" means the Electrical Advisory Committee as described in KRS 227.530;

(3) "Department" means the Department of Housing, Buildings and Construction;

(4) "Electrical" pertains to the installation, alteration, or repair of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith;

(5) "Electrical contractor" means any licensed individual, partnership, or corporation that is licensed to engage in, offers to engage in, or advertises or holds itself out to be qualified to engage in designing, planning, superintending, contracting of, or assuming responsibility for the installation, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power, and employs electrical workers to engage in this practice. If the electrical contractor is not a master electrician, the electrical contractor shall employ at least one (1) full-time master electrician***; however, no master electrician shall act in this capacity for more than one (1) electrical contractor***;

(6) "Electrician" means any person licensed by the department who is employed by an electrical contractor and is engaged in the construction, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power;

(7) "Maintenance worker or maintenance engineer" means a person who is a regular, bona fide employee or agent of a property owner, property lessor, property management company, or firm that is not in the electrical business but has jurisdiction over the property where the routine maintenance of electrical systems is being performed;

(8) "Master electrician" means any individual licensed to assume responsible charge, supervision, or direction of an electrician engaged in the construction, installation, alteration, or repair of electrical wiring used to furnish heat, light, or power; and

(9) "Routine maintenance of electrical systems" means the routine and periodic servicing of electrical systems, including cleaning, inspecting, and making adjustments to ensure the proper operation and the removal or replacement of component parts. "Routine maintenance of electrical systems" does not include the installation of complete electrical systems.

Section 3. KRS 227A.100 is amended to read as follows:

(1) Each licensee licensed under the provisions of KRS 227A.010 to 227A.140 shall annually, on or before the ***last day of the licensee's birth month***~~[anniversary date of the license]~~, pay to the department a renewal fee as established in administrative regulations promulgated by the department.

(2) A sixty (60) day grace period shall be allowed after the anniversary date of the license during which time a licensee may continue to practice and may renew his or her license upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the department.

(3) A license not renewed before the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(4) After the sixty (60) day grace period, a former licensee with a terminated license may have the license reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the department. An applicant for reinstatement after termination of the license shall not be required to submit to any examination as a condition for reinstatement, if the reinstatement application is made within three (3) years from the date of termination.

(5) A suspended license is subject to expiration and termination and shall be renewed as provided in this section. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended or is otherwise removed by the department and the right to practice is restored by the department.

(6) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the former licensee shall pay the reinstatement fee as promulgated by administrative regulations under subsection (4) of this section and the renewal fee as promulgated by administrative regulations under subsection (1) of this section.

(7) The department shall require an applicant for renewal or reinstatement of a license to show evidence of completing at least six (6) hours of continuing education provided by the National Electrical Contractors Association, the Associated Builders and Contractors, the International Brotherhood of Electrical Workers, the Associated General Contractors, the International Association of Electrical Inspectors, the Independent Electrical Contractors Association, the Kentucky Department of Housing, Buildings and Construction, or other provider of instruction approved by the department. The department shall promulgate administrative regulations establishing the content of the programs and the qualifications of the providers.

(8) The department shall require, where applicable, that an applicant for renewal or reinstatement of a license submit proof that the applicant has complied with workers' compensation and unemployment insurance laws and regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars ($500,000).

(9) The department may, through the promulgation of administrative regulations:

(a) Establish an inactive license for licensees who are not actively engaging in the electrical business but wish to maintain their license;

(b) Reduce license and renewal fees for inactive licensees; and

(c) Waive the requirements established in subsection (8) of this section for inactive licensees.

Section 4. KRS 227A.080 is amended to read as follows:

(1) Upon payment of all applicable fees, an applicant for licensure as a master electrician under KRS 227A.060 making application to the department prior to July 15, 2004, may be licensed by the department without completing the licensure requirements as established in KRS 227A.060 if:

(a) The applicant is currently licensed by a city, county, urban-county, consolidated local government, or the state of Kentucky; or

(b) The applicant is currently licensed, certified, or registered as a master electrician in another state whose standards are substantially equal to those in KRS 227A.060.

(2) Prior to July 15, 2004, an applicant who does not qualify for licensure under subsection (1) of this section or KRS 227A.060 may qualify for licensure by the following:

(a) An applicant for licensure as an electrical contractor shall qualify by showing a minimum of two (2) years of verifiable experience engaging in the work of an electrical contractor in this state;

(b) An applicant for licensure as a master electrician shall qualify by showing a minimum of six (6) years of verifiable experience as an electrical worker in this state; and

(c) An applicant for licensure as an electrician shall qualify by showing a minimum of four (4) years of verifiable experience as an electrical worker in this state.

Under this subsection, any individual who is currently engaged in the work of an electrical contractor, electrician, or master electrician but who has not been licensed by the state or any locality may qualify for licensure in lieu of requirements in KRS 227A.060 by documenting the appropriate years of experience in his or her respective area.

(3) ***Prior to July 15, 2004, the department may issue a pending license to an applicant. A pending license shall allow the applicant to act in the capacity applied for until the applicant's permanent license is issued or the application is denied.***

(4) After July 15, 2004, licensure under this section shall cease.

Section 5. KRS 227A.030 is amended to read as follows:

(1) The provisions of KRS 227A.010 to 227A.140 shall not apply to installations under the exclusive control of electric utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for those purposes or located outdoors on property owned or leased by the utility or on public highways, streets, or roads, or outdoors by established rights on private property.

(2) Nothing in KRS 227A.010 to 227A.140 shall require that a maintenance worker or maintenance engineer performing routine maintenance of electrical systems be licensed.

(3) Nothing in KRS 227A.010 to 227A.140 shall prohibit or interfere with the ability of a homeowner or farmer to install or repair electrical wiring on his or her real property.

(4) Nothing in KRS 227A.010 to 227A.140 shall require that a retailer or its agent engaged in making installations of an appliance purchased at a retail establishment be licensed.

(5) Nothing in KRS 227A.010 to 227A.140 shall be construed to require persons making installations exempt by KRS 227.460 to be licensed or to work for a licensed person.

(6) Nothing in KRS 227A.010 to 227A.140 shall preclude the use of unlicensed, nonresident electricians in temporary, emergency, or industrial shutdown situations. Those unlicensed, nonresident electricians shall apply for an electrician's license or a master electrician's license after they are employed and engaged in electrical work in the Commonwealth of Kentucky for a period of thirty (30) days. The license shall be obtained by the temporary, unlicensed, nonresident electricians within sixty (60) days of securing employment.

(7) Nothing in KRS 227A.010 to 227A.140 shall apply to a person performing work at a surface or underground coal mine or at a coal preparation plant.

(8) Nothing in KRS 227A.010 to 227A.140 shall apply to a person performing work for a telecommunications company for which the voltage is fifty (50) volts or less.

(9) Nothing in KRS 227A.010 to 227A.140 shall prohibit a factory-authorized representative from the installation, maintenance, or service of a medical equipment device. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(10) Nothing in KRS 227A.010 to 227A.140 shall apply to low-voltage, power-limited installations for control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer installed by a person licensed as:

(a) A master or journeyman heating, ventilation, and air conditioning technician employed by a licensed HVAC contractor pursuant to KRS 198B.658;

(b) A fire protection sprinkler contractor pursuant to KRS 198B.560;

(c) A manufactured housing dealer or certified installer pursuant to KRS 227.610;

(d) A boiler mechanic pursuant to KRS 236.210;

(e) A master or journeyman plumber pursuant to KRS 318.030;

(f) An onsite sewage disposal system installer pursuant to KRS 211.357; or

(g) An electrician or master electrician employed by an electrical contractor pursuant to KRS 227A.010 to 217A.140.

SECTION 6. A NEW SECTION OF KRS CHAPTER 227A IS CREATED TO READ AS FOLLOWS:

Nothing in KRS 227A.010 to 227A.140 shall apply to low-voltage, power-limited installations for control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer

installed by a low-voltage installer certificate holder. The office shall set the standards for experience and testing for issuance of a low-voltage installer certificate by administrative regulation and may charge a fee to be set by the office by administrative regulation but not to exceed the actual cost of issuance of the certificate.

Section 7. Whereas it is necessary to provide a pending license for electricians in the Commonwealth in order that they may continue to work while they are waiting for a decision regarding their application for a permanent license, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 7, 2004

CHAPTER 82

(HB 397)

AN ACT making appropriations for the operations, maintenance, and support of the legislative branch of the Commonwealth of Kentucky.

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

PART I

OPERATING BUDGET

Funds are appropriated to the Legislative Research Commission out of the General Fund, Restricted Funds accounts, or Federal Funds accounts for the fiscal year beginning July 1, 2004, and ending June 30, 2005, and for the fiscal year beginning July 1, 2005, and ending June 30, 2006, in the following discrete sums, or so much thereof as may be necessary. Each appropriation is made by the source of respective fund or funds accounts to be used for the purposes of the legislative branch of government of the Commonwealth of Kentucky.

			2004-05	2005-06
1.	General Assembly			
	General Fund	13,312,300	13,312,300	
	Restricted Funds		65,000	75,000
	Total		13,377,300	13,387,300

The above General Fund appropriation to the General Assembly includes funds for the Legislators Retirement Plan in each fiscal year and provides for the continuation of the annual cost of living adjustment authorized for the 2002-2004 biennium. Notwithstanding KRS 6.190 and 6.213, the daily compensation provided by KRS 6.190 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall be as authorized for the 2002-2004 biennium and shall continue as adjusted on January 1, 2005, and January 1, 2006, by the all urban consumer price index (CPI-U) not to exceed the cost-of-living adjustment provided state employees in the state/executive branch budget but not less than zero percent per annum.

			2004-05	2005-06
2.	Legislative Research Commission			
	General Fund	27,304,100	27,304,100	
	Restricted Funds		50,000	125,000
	Total		27,354,100	27,429,100

The total number of permanent full-time employees hired by the Legislative Research Commission with the above appropriation, and not assigned specifically to the House and Senate members of the Legislative Research Commission, shall not exceed 232 in fiscal year 2004-2005 and 232 in fiscal year 2005-2006. In addition to this number, the total number of permanent full-time employees assigned specifically to the House members of the Legislative Research Commission shall not exceed 19 and the permanent full-time employees assigned specifically to the Senate members of the Legislative Research Commission shall not exceed 10.

TOTAL - OPERATING BUDGET

		2004-05	2005-06
General Fund	40,616,400	40,616,400	
Restricted Funds		115,000	200,000
TOTAL		40,731,400	40,816,400

Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2003-2004 shall not lapse but shall continue into the fiscal year 2004-2005, and any unexpended balance in any succeeding fiscal year shall not lapse but shall continue into the following fiscal year.

TOTAL - LEGISLATIVE BRANCH BUDGET

		2004-05	2005-06
General Fund	40,616,400	40,616,400	
Restricted Funds		115,000	200,000
TOTAL		40,731,400	40,816,400

PART II

GENERAL PROVISIONS

1. The Director of the Legislative Research Commission with the approval of the Legislative Research Commission may expend any of the funds appropriated for legislative operation and administration in any lawful manner and for any legal purpose which the Commission shall authorize or direct. No executive agency or statute governing the executive agencies of state government shall have the power to restrict or limit the actions of or the expenditure of funds appropriated to the legislative branch of government.

2. The Director of the Legislative Research Commission shall submit monthly to the Legislative Research Commission a report listing all travel expenses reimbursed, travel-related per diem, and any other travel-related reimbursement for each General Assembly member and each employee of the Legislative Research Commission who was reimbursed during the previous month.

3. Any expenditure authorized by the Legislative Research Commission relating to implementation of KRS 56.463(4)(b) and funded by previous appropriations to the legislative branch shall not be governed by KRS 7A.010, 7A.120, 45.750 to 45.810, 48.010(14), and 48.020.

4. No member of the General Assembly except members of the Legislative Research Commission shall receive in any one fiscal year per diem compensation in excess of seven days in connection with out-of-state travel unless prior written approval has been received from the Legislative Research Commission.

5. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

6. Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2004 Regular Session of the General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

7. KRS 48.313 shall control when a total, subtotal, or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

8. Proposed revisions to Restricted Funds and Federal Funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Legislative Research Commission shall notify the Legislative Research Commission on a timely basis of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

9. The Legislative Research Commission shall cause the Director of the Legislative Research Commission to prepare a final budget document reflecting the 2004-2006 biennial budget of the legislative branch. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within 60 days of the adjournment of the 2004 Regular Session of the General Assembly.

10. Notwithstanding KRS 6.220, in lieu of stationery, there shall be allowed to each member of the House of Representatives the sum of $250 and to each member of the Senate the sum of $500. This allowance shall be paid out of the State Treasury at the beginning of the session.

PART III

BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The legislative branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Approved April 7, 2004

CHAPTER 83

(HB 331)

AN ACT relating to airport safety and security.

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

Section 1. KRS 183.137 is amended to read as follows:

(1) The board may contract with any person or governmental agency for the use of the airport. Such contract shall not prevent, restrict or hamper the general use of the airport by the public.

(2) All unpledged or surplus revenue derived from use of the airport shall be first applied to the maintenance of the airport. A governmental unit may expend funds for this purpose out of its general funds or any other available funds.

(3) Any airport board is excused, under any contract or lease, from accepting performance from or rendering performance to an entity other than the entity with which it originally entered into the contract or lease, unless the airport board has specifically consented to the assignment and assumption of the contract or lease to the new party following review of such factors as the airport board deems appropriate, including the impact of the assignment upon airport safety and security.

Approved April 7, 2004

CHAPTER 84

(SB 231)

AN ACT relating to rural economic development and declaring an emergency.

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

Section 1. KRS 154.22-040 is amended to read as follows:

(1) Each year the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent calendar year, and shall certify those counties as qualified counties. A county not certified on the basis of final unemployment figures may also be certified as a qualified county if the authority determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:

(a) The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, on the basis of final unemployment figures calculated by the Department for Employment Services in the Cabinet for Workforce Development;

(b) In each county the percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and

(c) Road quality, as quantified by the access within a county to roads ranked in descending order from best quality to worst quality as follows: two (2) or more interstate highways, one (1) interstate highway, a state four (4) lane parkway, four (4) lane principal arterial access to an interstate highway, state two (2) lane parkway and none of the preceding road types, as certified by the Kentucky Transportation Cabinet to the authority.

If the authority determines that a county which has previously been certified as a qualified county no longer meets the criteria of this subsection, the authority shall decertify that county. The authority shall not provide inducements for any facilities in that county and an approved company shall not be eligible for the inducements offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. In addition, the authority shall certify coal-producing counties, not otherwise certified as qualified counties in this subsection, for economic development projects involving the new construction of electric generation facilities. A coal producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time. For economic development projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in KRS 65.245, where the physical boundaries of the industrial park lie within two (2) or more counties of which at least one (1) of the counties is a qualified county under this section, an eligible company undertaking an economic development project within the physical boundaries of the industrial park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

(2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.

(3) The economic development project shall involve a minimum investment of one hundred thousand dollars ($100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.

(4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:

1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or

2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.

(b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

(c) The requirements of this subsection shall not apply to eligible companies which are nonprofit corporations established under KRS 273.163 to 273.387 and whose employees are handicapped and

sheltered workshop workers employed at less than the established minimum wage as authorized by KRS 337.295.

For an eligible company, within a regional industrial park which lies within two (2) or more counties, the calculation of the wage and benefit requirement shall be determined by averaging the average county hourly wage for all counties within the regional industrial park.

(5) No economic development project which will result in the replacement of agribusiness, manufacturing, or electric generation facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:

(a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:

1. Which has not been in operation for a period of ninety (90) or more consecutive days; or

2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or

3. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;

(b) Replaces an agribusiness, manufacturing, or electric generation facility existing in the Commonwealth:

1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

(c) Replaces an existing agribusiness, manufacturing, or electric generation facility located in the same qualified county, and the existing agribusiness, manufacturing, or electric generation facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the agribusiness, manufacturing, or electric generation facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the agribusiness, manufacturing, or electric generation facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

(6) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval, the authority may by final approval designate an eligible company to be an approved company.

Section 2. Whereas nonprofit corporations providing employment for rural handicapped Kentucky workers cannot fully utilize the Commonwealth's economic incentive programs, thereby endangering existing jobs and employment in Kentucky communities, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 7, 2004

CHAPTER 85

(SB 209)

AN ACT relating to fish and wildlife resources.

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

Section 1. KRS 150.645 is amended to read as follows:

(1) An owner, lessee or occupant of premises who gives permission to another person to hunt, fish, trap, camp or hike upon the premises shall owe no duty to keep the premises safe for entry or use by the person or to give warning of any hazardous conditions on the premises, and the owner, lessee, or occupant, by giving his permission, does not thereby extend any assurance that the premises are safe for such purpose, or constitute the person to whom permission is granted an invitee to whom a duty of care is owed. The owner, lessee, or occupant giving permission for any of the purposes stated above shall not be liable for any injury to any person or property caused by the negligent acts of any person to whom permission is granted. This section shall not limit the liability which would otherwise exist for willful and malicious failure to guard or to warn against a dangerous condition, use, structure, or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, or hike was granted for a consideration other than the consideration, if any, as set forth in KRS 411.190(1)(d), paid to said owner, lessee, or occupant by the state. The word "premises" as used in this section includes lands, private ways, and any buildings and structures thereon. Nothing in this section limits in any way any liability which otherwise exists.

(2) Department employees who participate in bona fide wildlife management practices are agents of the Department and State and, in the event property damage does occur, a claim for property damages may only be brought in the Board of Claims pursuant to KRS 44.070.

Section 2. KRS 150.177 is amended to read as follows:

In addition to the game permits issued under KRS 150.175, the commission may issue a special permit to an incorporated nonprofit wildlife conservation organization. In a license year, no more than two (2) special permits may be issued per species for which a game permit is required. ***The commission may also promulgate regulations allowing the issuance of cooperator permits to individuals or entities who enroll land with the department for public hunting and meet all applicable regulatory requirements.*** An organization ***or cooperator*** that receives a special permit issued under this section may sell and transfer the permit if all proceeds of the sale are used in Kentucky for wildlife management.

Approved April 7, 2004

CHAPTER 86

(SB 83)

AN ACT relating to firearms and ammunition.

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

Section 1. KRS 237.110 is amended to read as follows:

(1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. The Department of State Police or the Administrative Office of the Courts shall conduct a record check, covering all offenses and conditions which are required under 18 U.S.C. sec. 922(g) and this section, in the manner provided by 18 U.S.C. sec. 922(s). Licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court.

(2) The Department of State Police, following the record check required by subsection (1) of this section, shall issue a license if the applicant:

(a) ***1.*** Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application; ***or***

2. Is a member of the Armed Forces of the United States who is on active duty, who is at the time of application assigned to a military posting in Kentucky, and who has been assigned to a posting in the Commonwealth for six (6) months or longer immediately preceding the filing of the application;

(b) Is twenty-one (21) years of age or older;

(c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(d)(1) or (g) or KRS 527.040;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Demonstrates competence with a firearm by completion of a firearms safety or training course or class offered or approved by the Department of Criminal Justice Training.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training shall promulgate uniform administrative regulations concerning the certification and decertification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are currently certified as peace officers by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404 and peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be deemed to have met the training requirement;

(g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

(h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.

(3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.

(4) The Department of State Police shall deny, suspend, or revoke a license to carry a concealed deadly weapon upon written notice by the Cabinet for Families and Children that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, or for failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings.

(5) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides. A full-time or part-time peace officer who is currently certified as a peace officer by the Kentucky Law Enforcement Council who is authorized by his or her employer or government authority to carry a concealed deadly weapon at all times and

all locations within the Commonwealth pursuant to KRS 527.020 or a retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be exempt from paying the application or renewal fees. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars ($20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

(a) The name, address, place and date of birth, gender, and Social Security number of the applicant;

(b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

(d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

(e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(6) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:

(a) A completed application as described in subsection (5) of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation; and

(c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.

(7) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (6) of this section, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence within ninety (90) days from the date of the letter advising the applicant of the denial.

(8) The Department of State Police shall maintain an automated listing of licenseholders and pertinent information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other

agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the District Court. When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.

(10) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.

(11) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(12) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. When a licensee makes application for a renewal of his or her license, neither the sheriff nor the Department of State Police shall require a surrender of the license until the new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (5), (6), and (7) of this section.

(13) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding;

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property; or

(h) Any place where the carrying of firearms is prohibited by federal law.

(14) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employee, except that the Justice Cabinet may prohibit an employee from carrying any weapons, or ammunition, or both other than the weapons, or ammunition, or both issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon, or ammunition, or both in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(15) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.

(16) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(17) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

(b) The Department of State Police shall, not later than thirty (30) days after July 15, 1998, and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon

license or that will issue a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.

(18) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

(19) The following provisions shall apply to concealed deadly weapon training classes conducted by the Department of Criminal Justice Training or any other agency pursuant to this section:

(a) No concealed deadly weapon instructor trainer shall have his or her certification as a concealed deadly weapon instructor trainer reduced to that of instructor or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(b) No concealed deadly weapon instructor shall have his or her certification as a concealed deadly weapon instructor license suspended or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(c) Each concealed deadly weapon instructor or instructor trainer shall notify the Department of Criminal Justice Training not less than fourteen (14) days prior to the beginning of concealed deadly weapon applicant or concealed deadly weapon instructor training of the time, date, and location at which the class will be conducted. The department, upon the request of a firearms instructor trainer or certified firearms instructor, may permit a class to begin on less than fourteen (14) days' notice. The notice need not contain the names of the students. The notice may be made by mail, facsimile, e-mail, or other method which will result in the receipt of or production of a hard copy of the application. The postmark, facsimile date, or e-mail date shall be considered as the date on which the notice was sent;

(d) Each concealed deadly weapon instructor or instructor trainer who teaches a concealed deadly weapon applicant or concealed deadly weapon instructor class shall supply the Department of Criminal Justice Training with a class roster indicating which students enrolled but did not successfully complete the class, and which students enrolled and successfully completed the class which contains the name and address of each student, within five (5) working days of the completion of the class. The information may be sent by mail, facsimile, e-mail, or other method which will result in the receipt of or production of a hard copy of the information. The postmark, facsimile date, or e-mail date shall be considered as the date on which the notice was sent;

(e) An instructor trainer who assists in the conduct of a concealed deadly weapon instructor class or concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her certification. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon instructor or concealed deadly weapon class;

(f) An instructor who assists in the conduct of a concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her license. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon class;

(g) If the Department of Criminal Justice Training believes that a firearms instructor trainer or certified firearms instructor has not in fact complied with the requirements for teaching a certified firearms instructor or applicant class by not teaching the class as specified in KRS 237.126, or who has taught an insufficient class as specified in KRS 237.128, the department shall send to each person who has been listed as successfully completing the concealed deadly weapon applicant class or concealed deadly weapon instructor class a verification form on which the time, date, date of range firing if different from the date on which the class was conducted, location, and instructor of the class is listed by the

department and which requires the person to answer "yes" or "no" to specific questions regarding the conduct of the training class. The form shall be completed under oath and shall be returned to the Department of Criminal Justice Training not later than thirty (30) days after its receipt. Failure to complete the form, to sign the form, or to return the form to the Department of Criminal Justice Training within the time frame specified in this section or who, as a result of information on the returned form, is determined by the Department of Criminal Justice Training, following a hearing pursuant to KRS Chapter 13B, to not have received the training required by law shall be grounds for the Department of State Police to revoke the person's concealed deadly weapon license, following a hearing conducted pursuant to KRS Chapter 13B, at which hearing the person is found to have violated the provisions of this section or who has been found not to have received the training required by law;

(h) The department shall randomly inspect certified firearms instructor classes being conducted by firearms instructor trainers and shall randomly inspect applicant classes being conducted by firearms instructor trainers or certified firearms instructors to ascertain if the class is being conducted in conformity to the provisions of applicable statutes and administrative regulations and that the paperwork in the class matches the paperwork ultimately submitted by the firearms instructor trainer or certified firearms instructor for that same class. The department shall annually, not later than December 31 of each year, report to the Legislative Research Commission:

1. The number of random inspections;
2. The results of those inspections;
3. The number of deficiencies noted;
4. The nature of the deficiencies noted;
5. If a deficiency was noted, the categories of action taken by the department to either correct the deficiency or discipline the instructor, or a combination thereof;
6. The number of firearms instructor trainers and certified firearms instructors whose certifications were suspended, revoked, denied, or who were otherwise disciplined;
7. The reasons for the imposition of suspensions, revocations, denials, or other discipline; and
8. Suggestions for improvement of the concealed deadly weapon applicant training program and instructor process;

(i) If a concealed deadly weapon license holder is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon license shall be forthwith revoked by the Department of State Police as a matter of law;

(j) If a concealed deadly weapon instructor or instructor trainer is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon instructor certification or concealed deadly weapon instructor trainer certification shall be revoked by the Department of Criminal Justice Training as a matter of law; and

(k) The provisions of this section shall be deemed to be retroactive to March 1, 2002, and the following shall be in effect:

1. Action to eliminate the firearms instructor trainer program as done by emergency administrative regulation is rescinded, the program shall remain in effect, and no firearms instructor trainer shall have his or her certification reduced to that of certified firearms instructor;
2. The Kentucky State Police may revoke the concealed deadly weapon license of any person who received no firearms training as required by KRS 237.126 and administrative regulations or who received insufficient training as required by KRS 237.128 and administrative regulations, if the person voluntarily admits nonreceipt of training or admits receipt of insufficient training, or if either nonreceipt of training or receipt of insufficient training is proven following a hearing conducted pursuant to KRS Chapter 13B. Any action taken by the Kentucky State Police, other than revoking a permit for voluntary admission of nonreceipt of training or receipt of insufficient training to revoke a concealed deadly weapon license of a person suspected of nonreceipt of training or receipt of insufficient training, between March 1, 2002, and July 15, 2002, is suspended until the conduct of a KRS Chapter 13B hearing after July 15, 2002; and

3. Any person who has received a training affidavit requiring the person to verify training conducted during a firearms instructor course or applicant course from the Department of Criminal Justice Training between March 1, 2002, and July 15, 2002, shall have the time to respond to the training affidavit extended to August 1, 2002. The department shall notify each person who has not, as of July 15, 2002, returned his or her training affidavit of the extension of time to file the affidavit.

Section 2. KRS 16.220 is amended to read as follows:

(1) Subject to the duty to return confiscated firearms to innocent owners pursuant to KRS 500.090, all firearms confiscated by the Kentucky State Police and not retained for official use pursuant to KRS 500.090 shall be sold at public auction to federally licensed firearms dealers holding a license appropriate for the type of firearm sold. The Kentucky State Police shall transfer firearms that are to be sold to the Department of Finance, Division of Surplus Property, for sale. Proceeds of the sale shall be transferred to the account of the Department for Local Government for use as provided in subsection (3) of this section. Prior to the sale of any firearm, the Kentucky State Police shall make an attempt to determine if the firearm to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law.

(2) The Kentucky State Police shall receive firearms and ammunition confiscated by or abandoned to every law enforcement agency in Kentucky. The Kentucky State Police shall dispose of the firearms received in the manner specified in subsection (1) of this section. However, firearms which are not retained for official use, returned to an innocent lawful owner, or transferred to another government agency or public museum shall be sold as provided in subsections (1) and (3) of this section.

(3) The proceeds of firearms sales shall be utilized by the Department for Local Government to provide grants to city, county, charter county, and urban-county police departments, university safety and security departments organized pursuant to KRS 164.950 and sheriff's departments for the purchase of body armor for sworn peace officers of those departments and service animals, as defined in KRS 525.010, of those departments ***or for the purchase of firearms or ammunition***. Body armor purchased by the department receiving grant funds shall meet or exceed the standards issued by the National Institute of Justice for body armor. No police or sheriff's department shall apply for a grant to replace existing body armor unless that body armor has been in actual use for a period of five (5) years or longer.

(4) The Kentucky State Police may transfer a machine gun, short-barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any other weapon, or destructive device as defined by the National Firearms Act which is subject to registration under the National Firearms Act, and is not properly registered in the national firearms transfer records for those types of weapons, to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury, after a reasonable attempt has been made to transfer the firearm to an eligible state or local law enforcement agency or to an eligible museum and no eligible recipient will take the firearm or weapon. National Firearms Act firearms and weapons which are properly registered and not returned to an innocent lawful owner or retained for official use as provided in this section shall be sold to properly licensed dealers under subsection (3) of this section.

Approved April 7, 2004

CHAPTER 87

(SB 80)

AN ACT relating to excused absences from school.

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

Section 1. KRS 159.035 is amended to read as follows:

(1) Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.

(2) Except as provided in paragraph (e) of this subsection, a public school principal shall give a student an excused absence of up to ten (10) school days to pursue an educational enhancement opportunity determined by the principal to be of significant educational value, including but not limited to participation in an educational foreign exchange program or an intensive instructional, experiential, or performance program in one (1) of the core curriculum subjects of English, science, mathematics, social studies, foreign language, and the arts.

(a) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.

(b) Educational enhancement opportunities under this subsection shall not include nonacademic extracurricular activities, but may include programs not sponsored by the school district.

(c) If a request for an excused absence to pursue an educational enhancement opportunity is denied by a school principal, a student may appeal the decision to the district superintendent, who shall make a determination whether to uphold or alter the decision of the principal. If a superintendent upholds a principal's denial, a student may appeal the decision to the local board of education, which shall make a final determination. A principal, superintendent, and local board of education shall make their determinations based on the provisions of this subsection and the district's school attendance policies adopted in accordance with KRS 158.070 and KRS 159.150.

(d) A student receiving an excused absence under the provisions of this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

(e) A student shall not be eligible to receive an excused absence under the provisions of this subsection for an absence during a school's testing window established for assessments of the Commonwealth Accountability Testing System under KRS 158.6453 or during a testing period established for the administration of additional district-wide assessments at the school, except if a principal determines that extenuating circumstances make an excused absence to pursue an educational enhancement opportunity appropriate.

Approved April 7, 2004

CHAPTER 88

(SB 77)

AN ACT relating to the Department of Agriculture.

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

Section 1. KRS 246.030 is amended to read as follows:

The department shall consist of:

(1) The Office of the Commissioner***, which shall include the Division of Public Relations***.

(2) The ***Office of the*** Chief Executive Officer.

(3) The Office for Agricultural Marketing and Product Promotion, which shall include the following:

(a) The Division of ***Agriculture Marketing, Agritourism, and Agribusiness Recruitment***~~[Market Research]~~;

(b) The Division of Show and Fair Promotion;~~[and]~~

(c) The Division of Value-Added ***Animal and Aquaculture Production***~~[Development]~~***;***

(d) The Division of Value-Added Plant Production; and

(e) The Division of Agricultural Education, Farm Safety, and Farmland Preservation.

(4) The Office for Consumer and ***Environmental Protection***~~[Public Service]~~, which shall include the following:

(a) The Division of Regulation and Inspection;~~[and]~~

(b) The Division of Food Distribution***; and***

(c) The Division of Environmental Services.

(5) The Office of State Veterinarian, which shall include the ***following:***

(a) The Division of Animal Health***; and***

(b) The Division of Producer Services.

(6)~~[The Office for Environmental Outreach, which shall include the following:~~

~~(a) The Division of Pests and Weeds;~~

~~(b) The Division of Pesticides; and~~

~~(c) The Division of Agriculture and Environmental Education.~~

~~(7)]~~ The Office for Strategic Planning and Administration, which shall include the following:

(a) The Division of ***Personnel and Budget***~~[Fiscal and Intergovernmental Management]~~; ***and***

(b) The Division of Information Technology~~[;~~

~~(c) The Division of Personnel and Staff Development; and~~

~~(d) The Division of Public Relations and Communications]~~.

(7)~~[(8)]~~ The State Board of Agriculture.

Section 2. KRS 151.629 is amended to read as follows:

(1) There is established an Interagency Technical Advisory Committee on Groundwater to assist the KGS in the development, coordination, and implementation of a groundwater monitoring network for the Commonwealth. The committee shall consist of one (1) representative from each of the following agencies, to be appointed by that agency:

(a) Division of Conservation of the Department for Natural Resources;

(b) Division of Environmental Health and Community Safety of the Cabinet for Health Services;

(c) Division of Forestry of the Department for Natural Resources;

(d) Division of ***Environmental Services***~~[Pesticides]~~ of the Department of Agriculture;

(e) Division of Waste Management of the Department for Environmental Protection;

(f) Division of Water of the Department for Environmental Protection;

(g) Department for Environmental Protection;

(h) Department of Mines and Minerals of the Public Protection and Regulation Cabinet;

(i) Department for Natural Resources;

(j) Department for Surface Mining Reclamation and Enforcement;

(k) Kentucky Geological Survey;

(l) University of Kentucky College of Agriculture; and

(m) University of Kentucky Water Resources Research Institute.

(2) The committee shall have ***two (2) nonvoting legislative liaisons who shall be members of the General Assembly. One (1) liaison shall be a House member appointed by the Speaker of the House of Representatives and one (1) liaison shall be a Senate member appointed by the President of the Senate***~~[one (1) nonvoting legislative liaison who shall be a member of the General Assembly and who shall be appointed by the Legislative Research Commission]~~. The chair of the committee shall be the director of the University of Kentucky Water Resources Research Institute. The duties and responsibilities of the committee shall include:

(a) Developing a plan to coordinate agencies for the overall characterization of the state's groundwater, including occurrence, flow systems, water quantity, and water quality;

(b) Reviewing the data entry process to ensure that all data collected is placed into the Kentucky Groundwater Data Repository;

(c) Establishing a long-term groundwater monitoring plan for the Commonwealth;

(d) Making recommendations for prioritization of the state's groundwater research needs; and

(e) Annually reviewing and evaluating groundwater data collection and analysis.

(3) In addition to the members identified in subsection (1) or (2) of this section, the committee may have, as one (1) of its members, one (1) nonvoting representative from the United States Geological Survey, appointed by that agency.

Section 3. KRS 247.800 is amended to read as follows:

The Department of Agriculture, in conjunction with the Tourism Development Cabinet, shall create an interagency Office of Agritourism to be housed in the ***Division of Agriculture Marketing, Agritourism, and Agribusiness Recruitment within the Office for Agricultural Marketing and Product Promotion in the*** Department of Agriculture. As used in KRS 247.800 to 247.810, agritourism means the act of visiting a working-farm or any agricultural, horticultural, or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation. It shall be the purpose of the Office of Agritourism to:

(1) Promote agritourism in Kentucky to potential visitors, both national and international; and

(2) Assist in sustaining the viability and growth of the agritourism industry in Kentucky.

Section 4. KRS 249.400 is amended to read as follows:

As used in KRS 249.400 to 249.430 unless the context otherwise requires:

(1) "Department" means the Department of Agriculture;

(2) "Commissioner" means the Commissioner of Agriculture;

(3) "Division" means the Division of ***Environmental Services***~~[Pests and Weeds]~~.

Section 5. KRS 249.410 is amended to read as follows:

The Division of ***Environmental Services***~~[Pests and Weeds]~~ in the Department of Agriculture shall be under the supervision of the Commissioner and shall consist of personnel determined and appointed by him.

Section 6. KRS 249.420 is amended to read as follows:

In addition to its other duties, the division shall promote and sponsor programs to control pests and noxious weeds, enforce related regulatory and service measures assigned to the department, and conduct a Johnson grass control and eradication program.

Section 7. KRS 251.015 is amended to read as follows:

The Division of Regulation and Inspection is established within the Office for Consumer and ***Environmental Protection***~~[Public Service]~~ of the Department of Agriculture. The division shall be headed by a director appointed by the Commissioner who shall be responsible for administering the provisions of this chapter and any administrative regulations promulgated in accordance with this chapter.

Section 8. KRS 363.560 is amended to read as follows:

The power and duty to administer and enforce KRS 363.510 to 363.850 is vested in the Department of Agriculture, and shall be exercised under the supervision of the Office for Consumer and ***Environmental Protection***~~[Public Service]~~ through the Division of Regulation and Inspection. The division shall be headed by a director appointed by the Commissioner of Agriculture and shall have personnel as determined and appointed by the Commissioner.

Section 9. The General Assembly confirms Executive Order 04-01, as amended, dated January 6, 2004, by which the Kentucky Department of Agriculture was reorganized to the extent that it is not otherwise confirmed by this Act.

Approved April 7, 2004

CHAPTER 89

(SB 28)

AN ACT relating to education and declaring an emergency.

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

Section 1. KRS 158.070 is amended to read as follows:

(1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.

(2) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.

(3) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the commissioner of education, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(4) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.

(b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.

1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.

2. No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.

(c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.

(d) Each local board may use two (2) days for planning activities without the presence of pupils.

(e) Each local board may use the number of days deemed necessary for:

1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;

2. Local disaster which would endanger the health or safety of children; and

3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.

(5) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (4)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(6) (a) In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit teachers who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence. The commissioner of education shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and may be closed on the day of a primary election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.

(b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:

1. Designate the day as one (1) of the four (4) holidays permitted under subsection (4)(c) of this section; or

2. Not include the day in the minimum school term specified in subsection (1) of this section.

(7) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(8) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver to use an alternative service delivery option, including providing services during the school day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

(9) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

(10) Notwithstanding the provisions of KRS 158.060(3) and the provisions of subsection (1) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the instructional day. In the event of an unforeseen bus delay, the administrator of a school that participates in

the Federal School Breakfast Program may authorize up to fifteen (15) minutes of the six (6) hour instructional day if necessary to provide the opportunity for children to eat breakfast not to exceed eight (8) times during the school year within a school building.

(11) Notwithstanding any other statute to the contrary, the following provisions shall apply to a school district that misses school days due to emergencies, including weather-related emergencies:

(a) A certified school employee shall be considered to have fulfilled the minimum one hundred eighty-five (185) day contract with a school district under KRS 157.350 and shall be given credit for the purpose of calculating service credit for retirement under KRS 161.500 for certified school personnel if:

1. State and local requirements under this section are met regarding the equivalent of the number and length of instructional days, professional development days, holidays, and days for planning activities without the presence of pupils; and

2. The provisions of the district's school calendar to make up school days missed due to any emergency, as approved by the Kentucky Department of Education, including but not limited to a provision for additional instructional time per day, are met.

(b) Additional time worked by a classified school employee shall be considered as equivalent time to be applied toward the employee's contract and calculation of service credit for classified employees under KRS 78.615 if:

1. The employee works for a school district with a school calendar approved by the Kentucky Department of Education that contains a provision that additional instructional time per day shall be used to make up full days missed due to an emergency;

2. The employee's contract requires a minimum six (6) hour work day; and

3. The employee's job responsibilities and work day are extended when the instructional time is extended for the purposes of making up time.

(c) Classified employees who are regularly scheduled to work less than six (6) hours per day and who do not have additional work responsibilities as a result of lengthened instructional days shall be excluded from the provisions of this subsection. These employees may be assigned additional work responsibilities to make up service credit under KRS 78.615 that would be lost due to lengthened instructional days.

Section 2. Whereas numerous school districts will be forced to lengthen school days during the current school year in order for students to make up instructional time lost due to inclement weather and weather-related emergencies, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 7, 2004

CHAPTER 90

(SCR 93)

A CONCURRENT RESOLUTION requesting Kentucky's Congressional delegation and USDA Secretary Ann Veneman to secure federal financial assistance for Kentucky's nationally prominent food safety and farm animal-tracking initiatives.

WHEREAS, the federal government and the states are responding to the increased terrorists threats to our country's food supply in part by establishing mechanisms to track food animals from birth to consumer; and

WHEREAS, the recently discovered first-ever case of bovine spongiform encephalopathy (BSE or mad cow) disease in the state of Washington underscores the necessity of enhancing the country's food-tracking system; and

WHEREAS, farm organizations, food processors and marketers, the U.S. Department of Agriculture, and state agriculture officials support a national animal identification system; and

WHEREAS, a national animal-tracking system in Kentucky will serve the dual purposes of helping to preserve a safe food supply and to promote new farm market opportunities for Kentucky farmers;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The members of Kentucky's Congressional delegation and USDA Secretary Ann Veneman are respectfully requested to secure federal financial assistance to aid Kentucky in the development or acquisition of a premises identification database, to aid Kentucky farmers in utilizing animal-tracking technologies that promote food safety, and to aid in the other start-up costs that can be expected from implementing the national animal identification program.

Section 2. The Director of the Legislative Research Commission shall transmit this Resolution to Kentucky's Congressional members and to USDA Secretary Ann Veneman.

Approved April 7, 2004

CHAPTER 91

(SJR 80)

A JOINT RESOLUTION relating to civic literacy.

WHEREAS, civic literacy encourages young people to be thoughtful and productive members of their communities and future leaders of the Commonwealth; and

WHEREAS, it is crucial to the future health of our representative democracy that all young people be knowledgeable about democratic principles and practices, engaged in their communities and in politics, and committed to the public good; and

WHEREAS, on the National Assessment of Educational Progress in 1998, 75 percent of students scored at "basic" or "below basic" levels; and

WHEREAS, according to a 2000 study by The Center for Information and Research on Civic Learning and Engagement, only 39 percent of Kentucky's youth aged 18 to 24 voted; and

WHEREAS, according to "The Civic and Political Health of the Nation: A Generational Portrait" nearly one-half of 15 to 25 year olds indicate civic education increases their interest and participation in civic affairs; and

WHEREAS, the Northern Kentucky University Scripps Howard Center for Civic Engagement has been established to research and implement civic engagement programs for the future quality of life for Kentuckians; and

WHEREAS, individuals who have a clear understanding of the rights and responsibilities of citizenship in a representative democracy are more likely to exercise those rights and responsibilities to be competent and responsible citizens; and

WHEREAS, the need for civic literacy in our state is crucial to the long term social and political health of this Commonwealth;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Office of the Secretary of State, with the assistance of the Department of Education and the Administrative Office of the Courts, is urged to establish a committee to convene a Summit for Civic Literacy at Northern Kentucky University with the goal of determining a strategy for enhancing long-term civic engagement and literacy within the Commonwealth, and recommending a plan for improving civic engagement and literacy before the 2005 Regular Session of the General Assembly.

Section 2. If the committee is established, the make-up of this committee shall include a diverse range of student, teacher, and administrator representatives from K-16 education, media, civic organizations, and elected officials, and shall be facilitated by the Northern Kentucky University Scripps Howard Center for Civic Engagement.

Section 3. If the committee is established, the committee shall provide a report with its findings and recommendations for future action to the Office of the Secretary of State no later than December 1, 2004.

Approved April 7, 2004

CHAPTER 92

(SB 195)

AN ACT relating to volunteer fire department trustees.

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

Section 1. KRS 75.031 is amended to read as follows:

(1) (a) Upon creation of a fire protection district or a volunteer fire department district as provided in KRS 75.010, the affairs of the district shall be conducted by the board of trustees consisting of seven (7) members, four (4) to be elected by the members of the district as hereinafter set out and three (3) to be appointed by the county judge/executive or mayor in a consolidated local government pursuant to the provisions of KRS 67C.139. Two (2) members of the board of trustees shall be elected by the members of the firefighters of the district and shall be members of the district.~~[No more than one (1) of the two (2) firefighter trustees may be an employee of the fire protection district or volunteer fire department district.]~~ Two (2) members of the board of trustees shall be property owners who own real or personal property which is subject to the fire protection tax pursuant to KRS 75.040, who personally reside in the district, and who are not active firefighters and shall be elected by the property owners of the district. Property owners voting to select representatives to the board of trustees shall have attained the age of eighteen (18). The county judge/executive of the county in which the greater part of the district is located shall, with the approval of the fiscal court, appoint three (3) members of the board of trustees. In counties containing a city of the first class, trustees appointed by the county judge/executive to serve in volunteer fire prevention districts shall reside within the boundaries of that county. In counties governed by a consolidated local government, trustees appointed by the mayor to serve in volunteer fire prevention districts shall reside within the boundaries of the consolidated local government. At the first election held after the district is formed, one (1) firefighter shall be elected to serve on the board of trustees for a period of one (1) year and one (1) for a period of three (3) years, and one (1) nonfirefighter property owner shall be elected to serve on the board of trustees for a period of two (2) years and one (1) for a period of four (4) years. On the expiration of the respective terms, the successor to each shall have the same qualifications as his or her predecessor and shall be elected for a term of four (4) years. The original appointed members of the board of trustees shall be appointed for terms of one (1), two (2), and three (3) years respectively. On the expiration of the respective terms, the successors to each shall be appointed for a term of three (3) years. Upon the establishment of a consolidated local government, incumbent members shall continue to serve until the expiration of their current term of office. In the event of a vacancy in the term of an appointed or elected trustee, the county judge/executive shall appoint with the approval of the fiscal court a trustee for the remainder of the term, except in a county containing a consolidated local government. In a county containing a consolidated local government, the mayor pursuant to the provisions of KRS 67C.139 shall appoint a trustee for the remainder of the term.

(b) An appointed trustee may be removed from office as provided by KRS 65.007.

(c) No person shall be an elected trustee who, at the time of his or her election, is not a citizen of Kentucky and has not attained the age of twenty-one (21).

(d) Unless otherwise provided by law, an elected firefighter trustee may be removed from office by the mayor of a consolidated local government, or in a county not containing a consolidated local government, by the county judge/executive of the county in which the greater part of the district is located. An elected firefighter trustee may be removed after a hearing with notice as required by KRS Chapter 424, for inefficiency, neglect of duty, malfeasance, or conflict of interest. The hearing shall be initiated and chaired by the county judge/executive of a county or the mayor of a consolidated local government, who shall prepare a written statement setting forth the reasons for removal. The trustee to be removed shall be notified of his or her proposed removal and the reasons for the proposed removal

by registered mail sent to his or her last known address at least ten (10) days prior to the hearing. The person proposed to be removed may employ counsel to represent him or her. A record of the hearing shall be made by the county judge/executive or mayor respectively.

(e) The removal of an elected firefighter trustee of a fire protection district shall be subject to the approval of the fiscal court of the county in which the greater part of the district is located in those counties not containing a consolidated local government or the legislative council in a county containing a consolidated local government.

(f) An elected firefighter trustee removed pursuant to paragraphs (c) and (d) of this subsection may appeal, within ten (10) days of the rendering of the decision of the fiscal court or legislative council, respectively, to the Circuit Court of the county in which the greater part of the district is located. The scope of the appeal shall be limited to whether the county judge/executive, mayor, legislative council, or the fiscal court respectively, abused their discretion in removing the trustee.

(2) The elective offices of members of the board of trustees shall be filled by an election to be held once each year on the fourth Saturday of June between the hours of 11:00 a.m. and 2:00 p.m. The polls shall be located at the principal fire house in the district. The date, time, and place of the election shall be advertised in accordance with KRS 424.120. This notice shall be advertised at least thirty (30) days prior to the election date and shall include the names and addresses of the candidates to be voted on for each position of trustee. In lieu of the published notice for the election of the firefighter trustees, written notice containing the information required to be advertised may be sent by first-class mail to each member of the firefighters of the fire protection district or volunteer fire department district, addressed to the firefighter at his or her residence, at least thirty (30) days prior to the election date. The nominations for candidates for trustees both representing the firefighters and the property owners residing in the district shall be made in accordance with the bylaws of the department. The terms of the three (3) trustees appointed by the county judge/executive or mayor shall start at the same time as the terms of the elected trustees. On or before the beginning of the second fiscal or calendar year, depending on which basis the fire protection or volunteer fire department district is being operated, after June 16, 1966, all departments organized prior to June 16, 1966, shall increase their boards of trustees from three (3) to seven (7) members and elect the elective members in the manner set forth herein.

(3) The trustees shall elect from their number a chairman, a secretary, and a treasurer, the latter of whom shall give bond in an amount as shall be determined by the county judge/executive of the county in which the greater part of the fire protection district is located or the mayor in a consolidated local government, conditioned upon the faithful discharge of the duties of his or her office, and the faithful accounting for all funds which may come into his or her possession as treasurer. The premiums on the bonds shall be paid out of the funds of the district.

Approved April 7, 2004

CHAPTER 93

(SB 184)

AN ACT relating to immunizations.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

Any health care provider that administers or supervises an immunization authorized under this chapter or otherwise required by the Department for Public Health shall report information about the immunization upon request by, or as required by, the department. The department shall direct the method of reporting and the entity that will receive the report in an administrative regulation promulgated by the department in accordance with KRS Chapter 13A. The department shall not require any reporting of information contrary to the requirements of the federal Health Insurance Portability and Accountability Act of 1996.

Approved April 7, 2004

CHAPTER 94

(SB 86)

AN ACT relating to crimes and punishments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 516 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of criminal simulation in the first degree when he or she knowingly manufactures, markets, or distributes any product which is intended to defraud a test designed to detect the presence of alcohol or a controlled substance.

(2) Criminal simulation in the first degree is a Class D felony.

Section 2. KRS 516.110 is amended to read as follows:

(1) A person is guilty of criminal simulation ***in the second degree*** when***, with intent to defraud, he or she***:

(a) ~~[With intent to defraud, he]~~Makes or alters any object in such manner that it appears to have an antiquity, rarity, source***,*** or authorship which it does not in fact possess;~~[or]~~

(b) ***Uses any product to alter the results of a test designed to detect the presence of alcohol or a controlled substance in that person; or***

(c) ~~[With knowledge of its character and with intent to defraud, he]~~Possesses an object so simulated ***with knowledge of its character***.

(2) Criminal simulation ***in the second degree*** is a Class A misdemeanor.

Section 3. KRS 516.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) ***"Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed:***

(a) To receive a coin or bill or token made for the purpose; and

(b) In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or service; ~~["Written instrument" means any instrument or article containing written or printed matter or its equivalent used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.]~~

(2) "Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof***;*** ~~[.]~~

(3) ***"Controlled substance" has the same meaning as it does in KRS 218A.010;***

(4) "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument***;*** ~~[.]~~

(5) ~~[(4)]~~ To "falsely alter" a written instrument means to change, without the authority of anyone entitled to grant it, a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer***;*** ~~[.]~~

(6) ~~[(5)]~~ To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer***;*** ~~[.]~~

(7)~~[(6)]~~ To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof***;***~~[.]~~

(8)~~[(7)]~~ "Forged instrument" means a written instrument which has been falsely made, completed***,*** or altered***;***~~[.~~

~~(8) "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed:~~

~~(a) To receive a coin or bill or token made for the purpose; and~~

~~(b) In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or service.]~~

(9) "Slug" means an object or article which by virtue of its size, shape***,*** or any other quality is capable of being inserted, deposited***,*** or otherwise used in a coin machine as an improper substitute for a genuine coin, bill***,*** or token***;***~~[.]~~

(10) "Value of the slug" means the value of the coin, bill***,*** or token for which it is capable of being substituted***; and***

(11) "Written instrument" means any instrument or article containing written or printed matter or its equivalent used for the purpose of reciting, embodying, conveying, or recording information, or constituting a symbol or evidence of value, right, privilege, or identification, which is capable of being used to the advantage or disadvantage of some person.

Section 4. KRS 523.100 is amended to read as follows:

(1) A person is guilty of unsworn falsification to authorities when, with an intent to mislead a public servant in the performance of his duty, he:

(a) Makes a material false written statement, which he does not believe, in an application for any pecuniary or other benefit or in a record required by law to be submitted to any governmental agency;~~[or]~~

(b) Submits or invites reliance on any writing which he knows to be a forged instrument, as defined in~~[subsection (7) of]~~ KRS 516.010; or

(c) Submits or invites reliance***, except as provided in Section 2 of this Act,*** on any sample, specimen, map, boundary mark***,*** or other object he knows to be false.

(2) Unsworn falsification to authorities is a Class B misdemeanor.

Approved April 7, 2004

CHAPTER 95

(HJR 11)

A JOINT RESOLUTION naming various highways.

We pause to honor and remember Robert E. "Bobby" Thomas. He has been taken from our presence but not from our hearts.

WHEREAS, Robert E. "Bobby" Thomas, a native of Hardin County and the son of Lawrence and Mary Agnes Thomas, slipped from these earthly bounds on January 30, 2001; and

WHEREAS, Bobby Thomas took an oath to protect, to defend, and to serve when he became a law enforcement officer, an oath that he took seriously and lived by until his untimely death; and

WHEREAS, Bobby Thomas served six years as a Deputy Sheriff before being appointed Sheriff of Hardin County in February 1994, the post to which he was also elected to serve for two additional terms; and

WHEREAS, a consummate professional, Bobby Thomas was the immediate past president of the Kentucky Sheriff's Association and was a member of the National Sheriff's Association; and

WHEREAS, in recognition of his dedicated service, Bobby Thomas had been the proud recipient of a prestigious award from the United States Marshal Service; and

WHEREAS, Sheriff Bobby Thomas was responsible for organizing the Hardin County Chapter of TRIAD, which was the first chapter organized in Kentucky and which is a cooperative effort between law enforcement agencies and senior citizens to keep seniors actively involved in their community and to reduce criminal victimization of older persons; and

WHEREAS, Bobby Thomas was an active member of the Hardin County community as a member of the St. John Catholic Church and the Hardin County Farm Bureau, as well as the Elizabethtown and Radcliff Chambers of Commerce; and

WHEREAS, Bobby Thomas was past president of the Cecilia Ruritan Club, past chairman of the Hardin County Extension Foundation, former chairman of the Hardin County Cooperative Extension District Board, and a member of the Kentucky Association of Counties; and

WHEREAS, Bobby Thomas was a farmer, devoted husband to his beloved wife Martha, loving father to sons Nicky, Larry, and Greg, and daughters Lisa, Tracie, and Pam, and doting grandfather to 13 grandchildren; and

WHEREAS, Bobby Thomas was a special human being whose selfless contributions to his immediate family, extended family, friends, colleagues, community, and state will continue to live, prosper, and grow for many generations to come;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The General Assembly proclaims Robert E. "Bobby" Thomas to have been an outstanding citizen and exemplary representative of the Commonwealth.

Section 2. The Transportation Cabinet shall name Kentucky Route 1357 in Hardin County, also known as St. John's Road, from its junction with Kentucky Route 3005 to its junction with Kentucky Route 1375, the "Sheriff Bobby Thomas Memorial Highway."

Section 3. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs on the segment of Kentucky Route 1357 identified in Section 2 that read "Sheriff Bobby Thomas Memorial Highway."

Section 4. The Transportation Cabinet shall name the reconstructed segment of United States Route 460/Kentucky Route 80 in Pike County from the city of Pikeville to the Virginia State line the "Brandon Jacob Rowe and Gary Brent Coleman Memorial Highway." The cabinet shall, within 30 days of the effective date of this resolution, erect signs at each end of the route identified in this section, and at appropriate intervals in between, that read "Brandon Jacob Rowe and Gary Brent Coleman Memorial Highway."

Section 5. The Transportation Cabinet shall name Kentucky Route 54 from the intersection with Haynes Station Road in Daviess County (mile point 13.36) to the Ohio County line the "PFC David Paulie Nash Memorial Highway." The cabinet shall, within 30 days of the effective date of this resolution, erect signs at each end of the route identified in this section, and at appropriate intervals in between, that read "PFC David Paulie Nash Memorial Highway." The cabinet shall include on the signs described in this section an indication that PFC Nash was a recipient of the Medal of Honor.

Section 6. The Transportation Cabinet shall name United States Route 421 in Madison County from United States Route 25 to the Jackson County Line the "Battlefield Memorial Highway." The cabinet shall, within 30 days of the effective date of this resolution, erect signs at each end of the route identified in this section, and at appropriate intervals in between, that read "Battlefield Memorial Highway."

Section 7. The Transportation Cabinet shall name Kentucky Route 112 the "Dr. Loman C. Trover Highway" beginning at the intersection of Main Street and Railroad Street in Earlington, Kentucky, and continuing to the junction of Kentucky Route 112 and United States Route 62. The cabinet shall, within 30 days of the effective date of this Resolution, erect signs periodically along the route identified in this section that read "Dr. Loman C. Trover Highway."

Section 8. The Transportation Cabinet shall name Kentucky Route 70 from the intersection with Reservoir Street in Central City (Kentucky Route 277) to the Hopkins County line the "Tom Christerson Memorial Highway." The cabinet shall, within 30 days of the effective date of this Resolution, erect signs periodically along the route identified in this section that read "Tom Christerson Memorial Highway."

Section 9. The Transportation Cabinet shall name United States Route 421 the "Vietnam Veterans Memorial Highway" beginning at the northern city limits of the city of Manchester in Clay County, continuing through Clay and Jackson counties, and ending at the Rockcastle County line. The cabinet shall, within 30 days of the effective date of this Resolution, erect signs periodically along the route identified in this section that read "Vietnam Veterans Memorial Highway."

Approved April 7, 2004

CHAPTER 96

(HB 441)

AN ACT relating to licensed occupations.

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

Section 1. KRS 321.211 is amended to read as follows:

(1) Each person licensed as a veterinarian shall~~[annually]~~, on or before September 30 ***of each even-numbered year***, pay to the board a renewal fee to be promulgated by administrative regulation of the board for the renewal of his license. All licenses not renewed by September 30 of each ***even-numbered*** year shall expire based on the failure of the individual to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after September 30, ***as required for renewal in subsection (1) of this section,*** during which time individuals may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board. All licenses not renewed by November 30 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(3) After the sixty (60) day grace period, individuals with a terminated license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the board. No person who applies for reinstatement after termination of his license shall be required to submit to any examination as a condition for reinstatement, if reinstatement application is made within five (5) years from the date of termination.

(4) A suspended license is subject to expiration and termination and shall be renewed as provided in this chapter. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(5) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (3) of this section and the renewal fee as set forth in subsection (1) of this section.

(6) A person who fails to reinstate his license within five (5) years after its termination may not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements of this chapter.

(7) The board may require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulation.

SECTION 2. A NEW SECTION OF KRS CHAPTER 317A IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of this chapter to the contrary, the cosmetology board shall promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, for the issuance of licenses, and for the renewal of licenses issued under this chapter. All such fees, charges, and other moneys collected by the board, shall be paid into the State Treasury and credited to a trust and agency fund established under KRS 317A.080.

Section 3. KRS 317A.050 is amended to read as follows:

(1) The cosmetologist board shall issue an apprentice cosmetologist license to any person who:

(a) Is of good moral character and temperate habit;

(b) Is at least sixteen (16) years of age;

(c) Has at least two (2) years' high school education or its equivalent;

(d) Has graduated from a licensed school of cosmetology;

(e) Has passed an examination prescribed by the board to determine fitness to practice as an apprentice cosmetologist; and

(f) Has paid a fee of twelve dollars ($12).

(2) The cosmetologist board shall issue a cosmetologist license to any person who:

(a) Has at least two (2) years' high school education, or its equivalent;

(b) Has practiced as a licensed cosmetology apprentice for at least six (6) months under the immediate supervision of a licensed cosmetologist;

(c) Has satisfactorily passed an examination prescribed by the board to determine fitness to practice cosmetology; and

(d) Has paid a fee of fifteen dollars ($15).

(3) The cosmetologist board shall issue a license to act as a nail technician to any person who:

(a) Is of good moral character and temperate habit;

(b) Has completed satisfactorily a nail technician course of study of six hundred (600) hours in a licensed school of cosmetology;

(c) Has satisfactorily passed an examination prescribed by the board to determine fitness to practice as a nail technician;

(d) Has two (2) years of high school education or its equivalent; and

(e) Has paid a fee of twelve dollars ($12).

(4) (a) The cosmetologist board shall issue a license to operate a beauty salon to any licensed cosmetologist upon receipt of the completed application, accompanied by a fee of twenty-five dollars ($25). The board may refuse to issue a license if the applicant fails to comply with the provisions of this chapter or the administrative regulations promulgated by the board. If an owner is not a licensed cosmetologist, he shall have a licensed cosmetologist manage the beauty salon at all times. A new license shall be purchased if the salon's owner, manager, or location changes.

(b) The cosmetologist board shall issue a license to operate a nail salon to any licensed nail technician upon receipt of the completed application and payment of a fee of twenty-five dollars ($25). The board may refuse to issue a license if the applicant fails to comply with the provisions of this chapter or administrative regulations promulgated by the board pursuant to this chapter. An owner who is not a licensed nail technician shall have a licensed nail technician or cosmetologist as manager of the nail salon at all times. If the owner, manager, or location of a nail salon changes, a new license shall be purchased.

(c) Any person who leases or rents space in a beauty salon or nail salon shall be considered an independent owner and shall meet the qualifications for the respective salon owner as set out in paragraphs (a) and (b) of this subsection.

(5) The cosmetologist board shall issue an apprentice license to teach cosmetology to any person who:

(a) Has paid a fee of twenty-five dollars ($25);

(b) Has a high school education and one (1) year experience as a licensed cosmetologist; and

(c) Has submitted an application that has been signed by the owners of the school in which the applicant will study. The course of instruction shall be for a period of one thousand (1,000) hours and not less than six (6) months at one (1) school providing this instruction. The school owner shall certify to the board the completion of one thousand (1,000) hours.

(6) The cosmetologist board shall issue a license to teach cosmetology to any person who:

(a) Is of good moral character and temperate habit;

(b) Has a high school education;

(c) Has held an apprentice instructor license for at least six (6) months;

(d) Has satisfactorily passed the examination for the teaching of cosmetology as prescribed by the board; and

(e) Has paid a fee of thirty-five dollars ($35).

(7) The cosmetologist board may issue a license to operate a school of cosmetology to any person who:

(a) Has complied with the administrative regulations promulgated by the board including, but not limited to, administrative regulations governing the necessary equipment, supplies, and facilities;

(b) Has furnished proof to the board that the school of cosmetology is needed, that he is otherwise qualified to operate a school of cosmetology, and that he intends to establish a bona fide school for the education and training of competent cosmetologists and that he will employ a sufficient number of licensed instructors of cosmetology to conduct the school;

(c) That the licensee shall have as manager at all times a person licensed as an instructor who will be charged with the responsibility of having a sufficient number of licensed instructors of cosmetology to conduct the school. The designated manager shall be approved by the board before a license may be issued;

(d) Complies with the administrative regulations promulgated by the board including, but not limited to, those regarding courses, curriculum, and hours of instruction;

(e) Otherwise complies with this chapter;

(f) Has paid a fee of one thousand dollars ($1,000);

(g) Has been a resident of Kentucky for five (5) years, if the applicant is an individual. If the applicant is a firm or corporation, it shall be a Kentucky corporation or licensed or qualified to do business in Kentucky and shall have been in existence for a period of at least five (5) years;

(h) Any student enrolling in the school shall pay a fee of five dollars ($5) to the board before enrollment in the school shall be allowed; and

(i) The transfer of any license to operate a school of cosmetology shall require the board's approval and shall become effective upon filing a new application with the board and paying a fee of one thousand dollars ($1,000).

(8) Licenses issued by the board shall be renewed upon receipt, beginning July 1 through July 31 of each year. Beginning July 1, 1997, any license shall be renewed by the board upon receipt, if the applicant has provided proof of continuing education as determined by the board by promulgation of an administrative regulation. Cosmetology instructors shall provide proof of eight (8) clock hours of continuing education, and cosmetologists and nail technicians shall provide proof of six (6) clock hours of continuing education. The application for renewal shall be completed in full and accompanied by the appropriate renewal fee required by subsection (9) of this section. Applications for renewal shall comply with the provisions of this chapter and the administrative regulations promulgated by the board. Any license application received or postmarked after July 31 shall be considered expired and the appropriate restoration fee required by subsection (11) of this section shall apply. ***The administrative regulations established under this subsection shall allow continuing education credit to be awarded for educational programs sponsored by professional and trade groups that are presented as part of the trade show agenda, upon the professional or trade group or the program's sponsor making application to the board. Programs that focus on specific or brand-name products or promote or advertise a particular product shall be approved for continuing education credit if they, except for the use of specific or brand-name products, meet the criteria required for continuing education programs that use generic products.***

(9) The annual renewal license fee for each type of license renewal shall be as follows:

(a) Apprentice cosmetologist -- $10;

(b) Cosmetologist -- $12;

(c) Nail technician -- $10;

(d) Beauty salon -- $15;

(e) Nail salon -- $15;

(f) Apprentice instructor of cosmetology -- $15;

(g) Instructor of cosmetology -- $25; and

(h) Cosmetology school -- $100.

(10) Applications for examinations required by this section shall be accompanied by an examination fee as follows:

(a) Apprentice cosmetologist -- $25;

(b) Cosmetologist -- $35;

(c) Nail technician --$35;

(d) Instructor of cosmetology -- $50;

(e) Cosmetologist out-of-state -- $75;

(f) Instructor out-of-state -- $150; and

(g) Where examination is not required by the board -- $50.

(11) The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:

(a) Apprentice cosmetologist -- $50;

(b) Cosmetologist -- $50;

(c) Nail technician -- $50;

(d) Beauty salon -- $50;

(e) Nail salon -- $50;

(f) Cosmetology school -- $500;

(g) Instructor -- $75; and

(h) Apprentice instructor -- $50.

(12) The requirements for a new license for any person whose license has expired for a period exceeding five (5) years shall be as follows:

(a) Cosmetologists shall retake and pass the practical examination only;

(b) Apprentice cosmetologists shall complete one hundred fifty (150) additional hours training in a licensed school of cosmetology and pass the prescribed examination;

(c) Instructors of cosmetology shall retake and pass both the practical and science examination;

(d) Nail technicians shall retake and pass the practical examination, only; and

(e) The appropriate restoration fee as set forth in subsection (11) of this section shall be required.

(13) Guest artists or demonstrators appearing and demonstrating before persons other than licensed hairdressers, cosmetologists, and nail technicians shall pay a fee of thirty-five dollars ($35) for a permit that shall be in effect for ten (10) days. Guest artists performing before a nonprofit, recognized professional hairdressers, cosmetologists, and nail technicians group shall not be required to pay the fee.

(14) The board shall issue an inactive license to any person licensed under subsections (2), (3), and (6) of this section and in good standing with the board, upon application and submission of a twelve dollar ($12) fee. An inactive licensee shall not be required to complete the continuing education requirements contained in subsection (8) of this section. An inactive license may be restored to active status upon application to the board. In addition, the board may require the completion of continuing education not to exceed the amount required for license renewal for one (1) year. A person who possesses an inactive license shall not engage in

the practice of cosmetology for consideration, but an inactive licensee shall have the same right to purchase supplies as accorded an active licensee.

(15) The fee for certification shall be five dollars ($5).

(16) The fee for a duplicate license shall be five dollars ($5).

Section 4. KRS 315.150 is amended to read as follows:

(1) The board shall consist of six (6) members appointed by the Governor. Five (5) members shall be pharmacists licensed in this state. One (1) member shall be a citizen at large, who is not associated with or financially interested in the practice of pharmacy.

(2) ***In any calendar year scheduled to be the last full calendar year of a member's regular term in office,*** the association shall select and submit~~[annually]~~ to the Governor a list of five (5) pharmacists, each of whom has had at least five (5) years' experience in the practice of pharmacy, is a resident of the state and in good standing with the board. On or before March 1 of ***the same***~~[each]~~ year, the society, other state pharmacy organizations, or individuals may submit recommendations to the association for its consideration in selecting the list to be submitted. The Governor shall, before October 1 of ***the same***~~[each]~~ year, appoint no more than two (2) persons from each list so submitted, to take office on January 1 following. The citizen member shall be appointed by the Governor. No two (2) pharmacist members of the board shall be residents of the same county.

(3) ***Beginning January 1, 2005,*** the term of each board member shall be ***four (4)***~~[three (3)]~~ years. Each member shall serve until his ***or her*** successor is appointed and qualified, unless removed for cause. No member shall be ***appointed to***~~[so reappointed that he will]~~ serve for more than two (2) full terms.

(4) The Governor shall fill any vacancy of a pharmacist member from the names last submitted within sixty (60) days after such a vacancy occurs. Any member so appointed shall commence service at the next regularly-scheduled board meeting and shall serve for the remainder of the term vacated.

(5) Each member shall take and subscribe to an oath before a competent officer to perform the duties of ***the***~~[his]~~ office faithfully and impartially. The oath shall be inscribed upon ***the member's***~~[his]~~ commission.

(6) Four (4) members of the board shall constitute a quorum.

SECTION 5. A NEW SECTION OF KRS CHAPTER 317A IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding the provisions of this chapter to the contrary, the cosmetology board shall promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, for the issuance of licenses, and for the renewal of licenses issued under this chapter. All such fees, charges, and other moneys collected by the board, shall be paid into the State Treasury and credited to a trust and agency fund established under KRS 317A.080. The fees shall be established pursuant to subsections (2) to (7) of this section.

(2) The following licensing fees may be assessed by the cosmetology board and shall not exceed the following amounts:

(a) Apprentice cosmetologist $25.00;

(b) Cosmetologist $25.00;

(c) Nail technician $25.00;

(d) Beauty salon operator $35.00;

(e) Nail salon operator $35.00;

(f) Apprentice cosmetology instructor $35.00;

(g) Cosmetology instructor $50.00;

(h) School of cosmetology $1,500.00;

(i) Student ..... $15.00; and

(j) School of cosmetology, transfer of ownership ..... $1,500.00.

(3) The board shall assess the following licensing renewal fees that shall not exceed the following:

(a) Apprentice cosmetologist $20.00;

(b) Cosmetologist $20.00;

(c) Nail technician license $20.00;

(d) Beauty salon license $25.00;

(e) Nail salon license $25.00;

(f) Apprentice instructor of cosmetology $25.00;

(g) Instructor of cosmetology ..... $35.00; and

(h) Cosmetology school ..... $150.00.

(4) The cosmetology board shall assess fees for the taking of an examination that shall not exceed the following:

(a) Apprentice cosmetologist $75.00;

(b) Cosmetologist $75.00;

(c) Nail technician $75.00;

(d) Instructor of cosmetology $100.00;

(e) Cosmetologist out-of-state ..... $120.00; and

(f) Instructor out-of-state ..... $200.00.

(5) The fee for retaking an examination or any portion of an examination that an applicant has not successfully completed shall not exceed the following:

(a) Apprentice cosmetologist $32.00;

(b) Cosmetologist $32.00;

(c) Nail technician $32.00;

(d) Instructor of cosmetology $50.00;

(e) Cosmetologist out-of-state ..... $60.00; and

(f) Instructor out-of-state ..... $100.00.

(6) The fees for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration shall not exceed the following:

(a) Apprentice cosmetologist $75.00;

(b) Cosmetologist $75.00;

(c) Nail technician $75.00;

(d) Beauty salon $75.00;

(e) Nail salon $75.00;

(f) Cosmetology school $750.00;

(g) Instructor ..... $100.00; and

(h) Apprentice instructor ..... $75.00.

(7) The following miscellaneous fees may be assessed and shall not exceed the following:

(a) Guest artists $50.00;

(b) Inactive license for cosmetologist, nail technician, and cosmetology instructor $20.00;

(c) Certification fee $20.00;

(d) Duplicate license $25.00;

(e) Continuing education provider application ..... $300.00; and

(g) Where a reciprocity application required by the board .....$100.00.

Approved April 7, 2004

CHAPTER 97

(HB 113)

AN ACT relating to the awarding of high school diplomas.

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

Section 1. KRS 158.140 is amended to read as follows:

(1) When a pupil in any public elementary school or any approved private or parochial school completes the prescribed elementary program of studies, he is entitled to a certificate of completion signed by the teacher or teachers under whom the program was completed. The certificate shall entitle the pupil to admission into any public high school. Any promotions or credits earned in attendance in any approved public school are valid in any other public school to which a pupil may go, but the superintendent or principal of a school, as the case may be, may assign the pupil to the class or grade to which the pupil is best suited. In case a pupil transfers from the school of one (1) district to the school of another district, an assignment to a lower grade or course shall not be made until the pupil has demonstrated that he is not suited for the work in the grade or course to which he has been promoted.

(2) Upon successful completion of all state and local board requirements, the student shall receive a diploma indicating graduation from high school.

(3) A local school board may award a diploma indicating graduation from high school to any student posthumously with the high school class the student was expected to graduate.

(4) A local board of education shall award a high school diploma to an honorably discharged veteran who was enrolled in, but did not complete, high school prior to being inducted into the United States Armed Forces during World War II***, as defined in KRS 40.010, or the Korean conflict,*** as defined in KRS 40.010. Upon recommendation of the commissioner, the Kentucky Board of Education in consultation with the Kentucky Department of Veterans' Affairs shall promulgate administrative regulations to establish the guidelines for awarding these diplomas.

(5) The Department of Education shall establish the requirements for a vocational certificate of completion. A student who has returned to school after dropping out shall receive counseling concerning the vocational program. A student who has completed the requirements established for a vocational program shall receive a vocational certificate of completion specifying the areas of competence.

Section 2. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school districts and schools. ***The administrative regulations shall provide that***~~[They shall include the following]~~:

1. If a school offers~~[The courses of study for students shall include]~~ American sign language***, the course***~~[which]~~ shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law; ***and***

2. If a school offers the Reserve Officers Training Corps program, the course shall be accepted as meeting the physical education requirement for high school graduation notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;

(d) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;

(h) The transportation of children to and from school;

(i) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(j) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(k) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(l) The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;

2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or

3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;

2. Administrative regulations relating to civil rights;

3. Administrative regulations required by federal law; and

4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

Approved April 7, 2004

CHAPTER 98

(SB 85)

AN ACT relating to fines for traffic offenses.

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

Section 1. KRS 189.394 is amended to read as follows:

(1) The fines for speeding in violation of KRS 189.390 shall be:

Mph. Over	Prima Facie or Maximum Speed											
Limit	15	20	25	30	35	40	45	50	55	60	65	Fine
1	16	21	26	31	36	41	46	51	56	61	66	$1
2	17	22	27	32	37	42	47	52	57	62	67	2
3	18	23	28	33	38	43	48	53	58	63	68	3
4	19	24	29	34	39	44	49	54	59	64	69	4
5	20	25	30	35	40	45	50	55	60	65	70	5
6	21	26	31	36	41	46	51	56	61	66	71	16
7	22	27	32	37	42	47	52	57	62	67	72	17
8	23	28	33	38	43	48	53	58	63	68	73	18
9	24	29	34	39	44	49	54	59	64	69	74	19
10	25	30	35	40	45	50	55	60	65	70	75	20
11	26	31	36	41	46	51	56	61	66	71	76	22
12	27	32	37	42	47	52	57	62	67	72	77	24
13	28	33	38	43	48	53	58	63	68	73	78	26
14	29	34	39	44	49	54	59	64	69	74	79	28
15	30	35	40	45	50	55	60	65	70	75	80	30
16	31	36	41	46	51	56	61	66	71	76	81	32
17	32	37	42	47	52	57	62	67	72	77	82	34

18	33	38	43	48	53	58	63	68	73	78	83	36
19	34	39	44	49	54	59	64	69	74	79	84	38
20	35	40	45	50	55	60	65	70	75	80	85	40
21	36	41	46	51	56	61	66	71				43
22	37	42	47	52	57	62	67	72				46
23	38	43	48	53	58	63	68	73				49
24	39	44	49	54	59	64	69	74				52
25	40	45	50	55	60	65	70	75				55

(2) For speeding in excess of the speeds shown on the specific fine schedule the fine shall be not less than sixty dollars ($60) nor more than one hundred dollars ($100).

(3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and court costs to the clerk shall be considered as a plea of guilty for all purposes.

(4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.

(5) If the offense occurred in a highway work zone, the fine established by subsection (1) or (2) of this section shall be doubled.

(6) All fines collected for speeding in a highway work zone in violation of KRS 189.390 shall be deposited into a separate trust and agency account within the Transportation Cabinet known as the "Highway Work Zone Safety Fund." The highway work zone safety fund shall be used exclusively by the Transportation Cabinet to hire or pay for enhanced law enforcement of traffic laws within highway work zones.

(7) If the offense occurred in an area near a school where flasher lights have been installed and are flashing, and a speed limit has been set pursuant to KRS 189.336, the fine established by subsection (1) or (2) of this section shall be doubled.

Approved April 7, 2004

CHAPTER 99

(HB 418)

AN ACT relating to the Kentucky Asset/Liability Commission.

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

Section 1. KRS 56.8605 is amended to read as follows:

As used in KRS 56.860 to 56.869:

(1) "Authorized project" means:

(a) Any project approved by the General Assembly and included in an enacted budget; or

(b) Any project approved by the General Assembly that is certified by the secretary of the Finance and Administration Cabinet in accordance with the provisions of KRS 56.870, to be of a type that will independently produce revenues ***or will be payable from receipts of federal transportation funds that are projected by the commission to be*** sufficient to fully meet debt service, issuance costs, reserve fund requirements, insurance premiums, or any other expenditures necessary for financing so that no appropriation of state funds is required;

(2) "Cabinet" means the Finance and Administration Cabinet;

(3) "Commercial paper" means obligations that by their terms mature not more than three hundred sixty-six (366) days from the date of their issuance and that may be refunded;

(4) "Commission" means the Kentucky Asset/Liability Commission;

(5) "Estimated revenues" means the detailed revenue estimate or revised revenue estimate as certified by the secretary of the Finance and Administration Cabinet pursuant to KRS 48.115 and 48.120 on or before the dates on which tax and revenue anticipation notes are awarded to the purchaser;

(6) "Financial agreements" means interest rate swaps, options, or other agreements between two (2) parties to exchange or have the conditional right to exchange interest rate exposure from fixed rate to variable rate or from variable rate to fixed rate, or to provide other economic benefit to an issuance of notes or a portfolio of notes, or to hedge the net interest margin of the Commonwealth;

(7) "Financing agreement" means an agreement between the commission and the cabinet, or between the cabinet and a state agency, relating to the funding of projects or items associated with projects as described in KRS 56.867(3), or a judgment against a state agency or the Commonwealth. The provisions of a financing agreement shall require either the cabinet to make payments to the commission relating to the commission's issuance of notes, or the state agency to make payments to the cabinet reimbursing the cabinet for its payments to the commission on the agency's behalf. The obligations of the cabinet or the state agency under a financing agreement shall be contingent upon appropriations by the General Assembly to the cabinet or to the agency for the payment of those obligations;

(8) "Fixed-rate obligations" means obligations on which the interest rate remains constant to maturity;

(9) "Funding notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity of not more than ten (10) years for the purpose of funding judgments;

(10) "Interest-sensitive assets" means tangible and intangible property held by the Commonwealth whose market value is dependent upon the level of interest rates;

(11) "Interest-sensitive liabilities" means interest-bearing debts or other obligations of the Commonwealth or a state agency;

(12) "Multimodal obligations" means obligations for which the time period for establishing the rate of interest may be selectively determined and altered;

(13) "Net interest margin" means the net income or expense associated with the difference between the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;

(14) "Project notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity of not more than ***twenty (20)*** ~~[ten (10)]~~ years for the purpose of funding authorized projects, which may include bond anticipation notes;

(15) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, and set out in KRS Chapter 12, or any board, commission, institution, state university, or division exercising any function of the Commonwealth;

(16) "Tax and revenue anticipation notes" means notes that are issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity that is no later than the last day of the fiscal year during which the tax and revenue anticipation notes are issued and that are issued in anticipation of estimated revenues to be received in that fiscal year; and

(17) "Variable-rate demand obligations" means obligations on which the rate of interest is set by reference to a predetermined index or formula, by auction, by an agent that, in the sole judgment of the commission, has the financial expertise to establish market interest rates, or by similar means.

Section 2. KRS 56.863 is amended to read as follows:

The commission shall have the power and duty to:

(1) Maintain the records and perform the functions necessary and proper to accomplish the purposes of KRS 56.860 to 56.869;

(2) Promulgate administrative regulations relating to KRS 56.860 to 56.869;

(3) Conduct analysis to determine the impact of fluctuating receipts of revenues on the budget of the Commonwealth, fluctuating interest rates upon the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, and the resulting change in the net interest margin on the budget of the Commonwealth;

(4) Develop strategies to mitigate the impact of fluctuating receipts of revenues on the budget of the Commonwealth and of fluctuating interest rates on the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;

(5) Report its findings to the State Investment Commission at least annually to assist the State Investment Commission in developing and implementing its investment strategy. The State Investment Commission shall provide the commission with a copy of its monthly investment income report to aid the commission in developing and implementing its strategies;

(6) Issue funding notes, project notes, and tax and revenue anticipation notes or other obligations on behalf of any state agency to fund authorized projects or to satisfy judgments;

(7) Refund any funding notes, project notes, or tax and revenue anticipation notes issued under KRS 56.860 to 56.869 to achieve economic savings, to better match receipts with expenditures, or as a part of a continuing finance program;

(8) Designate individual employees or officers of the Office of Financial Management as agents for purposes of approving the principal amount of tax and revenue anticipation notes, the interest rate, the discount, maturity date, and other relevant terms of tax and revenue anticipation notes, project notes, and funding notes or refunding notes issued within constraints established by the commission and to execute agreements, including notes and financial agreements, for the commission;

(9) Enter into financial agreements for the purpose of hedging ***its current or projected*** ~~[a portfolio of]~~ interest-sensitive assets and interest-sensitive liabilities to stabilize the Commonwealth's net interest margin, as deemed necessary by the commission, subject to administrative regulations promulgated by the commission that limit the net exposure of the Commonwealth as a result of these financial agreements;

(10) Deposit net interest payments and premiums received by the commission under financial agreements ~~[relating to funding notes, project notes, and tax and revenue anticipation notes]~~ into a restricted account, which shall not lapse at the end of the fiscal year but shall continue to accumulate to act as security for these financial agreements. This duty is mandatory in nature. Any accumulated funds in excess of the amount determined by the commission to be necessary to establish this security may be applied to debt service payments, net interest payments, and premiums and expenses related to ***interest-sensitive liabilities*** ~~[tax and revenue anticipation notes, project notes, and funding notes]~~; and

(11) Report to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue on a semiannual basis, by September 30 and March 31 of each year, the following:

(a) A description of the Commonwealth's investment and debt structure;

(b) The plan developed to mitigate the impact of fluctuating revenue receipts on the budget of the Commonwealth and fluctuating interest rates on the interest-sensitive assets and interest-sensitive liabilities of the Commonwealth, including an analysis of the impact that a change in the net interest margin would have on the budget of the Commonwealth. The report due by March 31 of each year shall reflect the strategy for January through June of the fiscal year, and the report due by September 30 shall reflect the strategy for July through December of the fiscal year;

(c) The principal amount of notes issued, redeemed, and outstanding; and a description of all financial agreements entered into during the reporting period. The report due by March 31 shall include information about agreements entered into from July through December of the fiscal year. The report due by September 30 shall include information about agreements entered into between January and June of the prior fiscal year; and

(d) A summary of gains and losses associated with financial agreements and any other cash flow strategies undertaken by the commission to mitigate the effect of fluctuating interest rates during each reporting period. The report due by March 31 shall include information about agreements and strategies entered into or undertaken from July through December of the fiscal year. The report due by September 30 shall include information about agreements and strategies entered into or undertaken from January through June of the prior fiscal year.

Approved April 7, 2004

CHAPTER 100

(HB 572)

AN ACT relating to collective bargaining.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 of this Act:

(1) "Cabinet" means the Kentucky Labor Cabinet;

(2) "Exclusive representative" means the labor organization which has been designated by the Labor Cabinet as the representative of the majority of police officers or firefighters in appropriate units or has been so recognized by the urban-county government;

(3) "Firefighter" means an employee of an urban-county government engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;

(4) "Labor organization" means any chartered labor organization of any kind in which police officers or firefighters participate and which exists for the primary purpose of dealing with urban-county governments concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;

(5) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(6) "Police officer" means an employee, sworn or certified, of an urban-county government who participates in the Law Enforcement Foundation Program Fund provided in KRS 15.410 to 15.510; and

(7) "Secretary" means the secretary of the Labor Cabinet of the Commonwealth of Kentucky.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Police officers and firefighters of an urban-county government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.

(2) Labor organizations designated by the cabinet as the representative of the majority of police officers or firefighters in an appropriate unit or recognized by an urban-county government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

(3) Labor organizations recognized by an urban-county government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interests of all police officers or firefighters in the unit without discrimination.

SECTION 3. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

The urban-county government and the labor organization that has been designated as the exclusive representative of police officers or firefighters in an appropriate unit, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively.

SECTION 4. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Urban-county governments and their representatives and agents are prohibited from:

(a) Interfering, restraining, or coercing police officers or firefighters in the exercise of the rights guaranteed in Section 2 of this Act;

(b) Dominating or interfering with the formation, existence, or administration of any labor organization;

(c) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided that nothing in this section, or in any other statute of this state, shall preclude an urban-county government from making an agreement with a labor organization to require as a condition of employment membership therein on or after the thirtieth day following the beginning of that employment or on the effective date of the agreement, whichever is the later;

(d) Discharging or otherwise discriminating against an employee because he or she has signed or filed any affidavit, petition, or complaint or given any information or testimony under this section; or

(e) Refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(2) Labor organizations and their agents are prohibited from:

(a) Restraining or coercing:

1. Police officers or firefighters in the exercise of the right guaranteed in Section 2 of this Act, and

2. An urban-county government in the selection of a representative for the purposes of collective bargaining or the adjustment of grievances; or

(b) Refusing to bargain collectively in good faith with an urban-county government, if they have been designated in accordance with the provisions of this section as the exclusive representative of police officers or firefighters in an appropriate unit.

(3) For the purposes of this section, to bargain collectively is to carry out in good faith the mutual obligation of the parties, or their representatives; to meet together at reasonable times, including meetings in advance of the budget-making process; to negotiate in good faith with respect to wages, hours, and other conditions of employment; to negotiate an agreement; to negotiate any question arising under any agreement; and to execute a written contract incorporating any agreement reached, if requested by either party. The obligation shall not be interpreted to compel either party to agree to a proposal, or require either party to make a concession.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Whenever, in accordance with administrative regulations that may be promulgated by the cabinet, a petition has been filed:

(a) By a police officer, group of police officers, a firefighter, group of firefighters, or any labor organization acting on behalf of thirty percent (30%) of the employees who have signed labor organization affiliation cards and the labor organization showing proof of representation:

1. Alleging that they wish to be represented for collective bargaining by a labor organization as exclusive representative, or

2. Asserting that the labor organization which has been certified or is currently being recognized by the urban-county government as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) By an urban-county government alleging that one (1) or more labor organizations has presented to it a claim to be recognized as the representative of the majority of police officers or firefighters in an appropriate unit;

The cabinet shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. If the cabinet finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the police officers or firefighters desire to be represented, and shall certify the result thereof to the legislative council of the urban-county government.

(2) The cabinet shall decide in each case, in order to assure police officers and firefighters the fullest freedom in exercising the rights guaranteed by this section, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of

the police officers or firefighters involved; the history of collective bargaining; and the desires of the police officers or firefighters.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding twelve (12) month period a valid election has been held. The cabinet shall determine who is eligible to vote in the election and shall promulgate administrative regulations governing the election. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted and the ballot shall provide for the selection between the two (2) choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the cabinet as exclusive representative of all the police officers or firefighters in the unit.

(4) Nothing in this or any other law shall be construed to prohibit recognition of a labor organization as the exclusive representative by an urban-county government by mutual consent.

(5) No election shall be directed by the cabinet in any bargaining unit where there is in force and effect a valid collective bargaining agreement; provided, however, no collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than four (4) years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

SECTION 6. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

Violations of the provisions of Section 4 of this Act shall be deemed to be unfair labor practices remedial by the cabinet in the following manner.

(1) Whenever it is charged by an urban-county government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the cabinet or any hearing officer designated by the cabinet, shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(2) If, upon the preponderance of the evidence presented, the cabinet is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers or firefighters with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the cabinet is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the cabinet shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the cabinet, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event, the six (6) month period shall be computed from the day of his or her discharge. No final order of the cabinet shall require the reinstatement of any individual as a police officer or firefighter who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.

(3) Until a final order has been appealed, the cabinet at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.

(4) The cabinet or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.

(5) Any person aggrieved by a final order of the cabinet may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

SECTION 7. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) If, after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications to an existing agreement, the parties to the negotiations are deadlocked, either party or the parties jointly may petition the cabinet, by certified mail, return receipt requested, or by registered mail, to initiate fact-finding.

(2) Upon receipt of a petition to initiate fact-finding, the cabinet shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the secretary is empowered to utilize his or her office in an effort to effectuate a settlement between the parties through mediation and conciliation.

(3) Upon completion of the cabinet's investigation, and if a settlement between the parties has still not been reached, the secretary shall within ten (10) days appoint a qualified and disinterested person as the impartial chairman of a three (3) member panel to function as the fact-finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) member named by the urban-county government, parties to the deadlocked negotiations.

(4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the urban-county government is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings, the panel shall, by majority decision, make written findings of fact, recommendations, and opinions to be served on the urban-county government and labor organization parties and released to the public. Expenses incurred by the three (3) member panel in this section shall be paid by the parties involved in the labor dispute.

SECTION 8. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

(1) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties.

(2) An agreement between the urban-county government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the urban-county government or his or her representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between an urban-county government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers or firefighters represented by a labor organization.

(3) Suits for violation of agreements between an urban-county government and a labor organization representing police officers or firefighters may be brought by the parties to the agreement in the Circuit Court of the urban-county government.

SECTION 9. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

Upon the written authorization of any police officers or firefighters within a bargaining unit, the urban-county government shall deduct from the payroll of the police officer or firefighter the monthly amount of dues as certified by the secretary of the exclusive bargaining representative, and shall deliver the same to the treasurer of the exclusive bargaining representative.

SECTION 10. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

No police officer or firefighter of an urban-county government shall engage in, and no police officer labor organization or firefighter labor organization shall sponsor or condone, any strike.

SECTION 11. A NEW SECTION OF KRS CHAPTER 67A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, the provisions of Sections 1 to 10 of this Act shall not be construed or interpreted to apply to volunteer firefighters.

Approved April 7, 2004

CHAPTER 101

(HB 570)

AN ACT relating to collective bargaining for police officers in a consolidated local government.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 of this Act:

(1) "Cabinet" means the Kentucky Labor Cabinet;

(2) "Labor organization" means any chartered labor organization of any kind in which police officers participate and which exists for the primary purpose of dealing with consolidated local governments

concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;

(3) "Exclusive representative" means the labor organization which has been designated by the Labor Cabinet as the representative of the majority of police officers in appropriate units or has been so recognized by the consolidated local government;

(4) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers; and

(5) "Secretary" means the secretary of the Labor Cabinet of the Commonwealth of Kentucky.

SECTION 2. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Police officers of a consolidated local government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.

(2) Labor organizations designated by the cabinet as the representative of the majority of police officers in an appropriate unit or recognized by a consolidated local government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

(3) Labor organizations recognized by a consolidated local government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interest of all police officers in the unit without discrimination.

(4) When a labor organization has been designated in accordance with the provisions of this section as the exclusive representative of police officers in an appropriate unit, the mayor of a consolidated local government or his designated authorized representative shall represent the consolidated local government in collective bargaining with the labor organization.

SECTION 3. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

The consolidated local government and the labor organization that has been designated as the exclusive representative of police officers in an appropriate unit, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively.

SECTION 4. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Consolidated local governments, their representatives, or their agents are prohibited from:

(a) Interfering, restraining, or coercing police officers in the exercise of the rights guaranteed in Section 2 of this Act;

(b) Dominating or interfering with the formation, existence, or administration of any labor organization;

(c) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided that nothing in this section, or in any other statute of this state, shall preclude a consolidated local government from making an agreement with a labor organization to require as a condition of employment membership therein on or after the thirtieth day following the beginning of that employment or on the effective date of the agreement, whichever is the later;

(d) Discharging or otherwise discriminating against an employee because he or she has signed or filed any affidavit, petition, or complaint or given any information or testimony under this section; or

(e) Refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(2) Labor organizations or their agents are prohibited from:

(a) Restraining or coercing:

1. Police officers in the exercise of the right guaranteed in Section 2 of this Act; and

2. A consolidated local government in the selection of a representative for the purposes of collective bargaining or the adjustment of grievances; or

(b) Refusing to bargain collectively in good faith with a consolidated local government, if they have been designated in accordance with the provisions of this section as the exclusive representative of police officers in an appropriate unit.

(3) For the purposes of this section, to bargain collectively is to carry out in good faith the mutual obligation of the parties, or their representatives; to meet together at reasonable times, including meetings in advance of the budget-making process; to negotiate in good faith with respect to wages, hours, and other conditions of employment; to negotiate an agreement; to negotiate any question arising under any agreement; and to execute a written contract incorporating any agreement reached, if requested by either party. The obligation shall not be interpreted to compel either party to agree to a proposal, or require either party to make a concession.

SECTION 5. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Whenever, in accordance with administrative regulations that may be promulgated by the Cabinet, a petition has been filed:

(a) By a police officer or group of police officers or any labor organization acting in behalf of thirty percent (30%) of the employees who have signed labor organization affiliation cards and the labor organization showing proof of representation:

1. Alleging that they wish to be represented for collective bargaining by a labor organization as exclusive representative; or

2. Asserting that the labor organization which has been certified or is currently being recognized by the consolidated local government as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) By a consolidated local government alleging that one (1) or more labor organizations has presented to it a claim to be recognized as the representative of the majority of police officers in an appropriate unit;

The cabinet shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. If the cabinet finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the police officers desire to be represented and shall certify the result thereof to the legislative council of the consolidated local government.

(2) The cabinet shall decide in each case, in order to assure police officers the fullest freedom in exercising the rights guaranteed by this section, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the police officers involved; the history of collective bargaining; and the desires of the police officers.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding twelve (12) month period a valid election has been held. The cabinet shall determine who is eligible to vote in the election and shall promulgate administrative regulations governing the election. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for the selection between the two (2) choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the cabinet as exclusive representative of all the police officers in the unit.

(4) Nothing in this or any other law shall be construed to prohibit recognition of a labor organization as the exclusive representative by a consolidated local government by mutual consent.

(5) No election shall be directed by the cabinet in any bargaining unit where there is in force and effect a valid collective bargaining agreement; provided, however, that collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than four (4) years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

SECTION 6. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

Violations of the provisions of Section 4 of this Act shall be deemed to be unfair labor practices remedial by the cabinet in the following manner.

(1) Whenever it is charged by a consolidated local government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the cabinet or any hearing officer designated by the cabinet shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(2) If, upon the preponderance of the evidence presented, the cabinet is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the cabinet is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the cabinet shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the cabinet, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event the six (6) month period shall be computed from the day of his or her discharge. No final order of the cabinet shall require the reinstatement of any individual as a police officer who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.

(3) Until a final order has been appealed, the cabinet at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.

(4) The cabinet or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.

(5) Any person aggrieved by a final order of the cabinet may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

SECTION 7. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) If, after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement, the parties to the negotiations are deadlocked, either party or the parties jointly may petition the cabinet, by certified mail, return receipt requested, or by registered mail, to initiate fact-finding.

(2) Upon receipt of a petition to initiate fact-finding, the cabinet shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the secretary is empowered to utilize his or her office in an effort to effectuate a settlement between the parties through mediation and conciliation.

(3) Upon completion of the cabinet's investigation, and if a settlement between the parties has still not been reached, the secretary shall within ten (10) days appoint a qualified and disinterested person as the impartial chairman of a three (3) member panel to function as the fact-finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) member named by the consolidated local government, parties to the deadlocked negotiations.

(4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the consolidated local government is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact, recommendations, and opinions to be served on the consolidated local government and labor organization (parties) and these shall be released to the public. Expenses incurred by the three (3) member panel in this section shall be paid by the parties involved in the labor dispute.

SECTION 8. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

(1) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties.

(2) An agreement between the consolidated local government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the consolidated local government or the mayor's representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between a consolidated local government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers represented by a labor organization.

(3) Suits for violation of agreements between a consolidated local government and a labor organization representing police officers may be brought by the parties to the agreement in the Circuit Court of the consolidated local government.

SECTION 9. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

Upon the written authorization of any police officers within a bargaining unit, the consolidated local government shall deduct from the payroll of the police officer the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative.

SECTION 10. A NEW SECTION OF KRS CHAPTER 67C IS CREATED TO READ AS FOLLOWS:

No police officer of a consolidated local government shall engage in, and no police officer labor organization shall sponsor or condone, any strike.

Approved April 7, 2004

CHAPTER 102

(HB 82)

AN ACT relating to communicable diseases.

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

Section 1. KRS 211.180 is amended to read as follows:

(1) The cabinet shall enforce the administrative regulations promulgated by the secretary of the Cabinet for Health Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including but not limited to the following matters:

(a) Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled;

(b) The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In adopting the regulations the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician-diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control and Prevention of the United States Public Health Service. No later than October 1, ***2004***~~[2000]~~, the cabinet shall require reporting of cases of human immunodeficiency virus infection by reporting of ***the name***~~[a unique code]~~ and other relevant data as requested by the Centers for Disease Control and Prevention and as further specified in KRS 214.645. Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient.

(c) The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and

semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;

(d) The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;

(e) Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children;

(f) The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery; and

(g) Protection and improvement of the health of the people through better nutrition.

(2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars ($20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, 15 U.S.C. secs. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.

(3) Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

Section 2. KRS 214.181 is amended to read as follows:

(1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.

(4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

(a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

(b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.

(5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

(b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.

(c) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative;

2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;

4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;

5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;

6. A health facility or health-care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;

8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;

9. A person allowed access by a court order that is issued in compliance with the following provisions:

a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human-immunodeficiency-virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;

c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

(6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 212. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.

(b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test.

(c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the ***name*** ~~[unique code]~~ and other information specified under KRS 214.645 shall be reported to the cabinet. The cabinet shall continue to provide for anonymous testing and counseling.

(d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(7) No public health department and no other private or public facility ***shall be*** established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;

(b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

(d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

(e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social,

medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;

(f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;

(g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;

(h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet; and

(j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he or she does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 3. KRS 214.625 is amended to read as follows:

(1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.

(4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

(a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

(b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.

(5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

(b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.

(c) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative;

2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;

4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;

5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;

6. A health facility or health-care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;

8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;

9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in KRS 438.250;

10. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;

c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice; and

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

(6) (a) The Cabinet for Health Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.

(b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test.

(c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the ***name*** ~~[unique code]~~ and other information specified in KRS 214.645 shall be reported to the cabinet. The cabinet shall continue to provide for anonymous testing and counseling.

(d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;

(b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

(d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

(e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;

(f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;

(g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;

(h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet; and

(j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he or she does not advertise or hold himself or herself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

Section 4. KRS 214.645 is amended to read as follows:

(1) The Cabinet for Health Services shall establish a system for reporting, by the use of ***the person's name***~~[a unique code]~~, of all persons who test positive for the human immunodeficiency virus (HIV) infection. The reporting shall include the data including, but not limited to, CD4 count and viral load, and other information that are necessary to comply with the confidentiality and reporting requirements of the most recent edition of the Centers for Disease Control and Prevention's (CDC) Guidelines for National Human Immunodeficiency Virus Case Surveillance. As recommended by the CDC, anonymous testing shall remain as an alternative. If less restrictive data identifying requirements are identified by the CDC, the cabinet shall evaluate the new requirements for implementation.

(2) The reporting system established under subsection (1) of this section shall:

(a) Use ***the same confidential name-based approach for HIV surveillance that is used for AIDS surveillance***~~[a unique code that consists of any combination of initials, the last four (4) numbers of the Social Security number, birth date, or other information to be determined]~~ by the cabinet;

(b) Attempt to identify all modes of HIV transmission, unusual clinical or virologic manifestations, and other cases of public health importance;

(c) Require collection of the ***names***~~[unique code]~~ and data from all private and public sources of HIV-related testing and care services; and

(d) Use reporting methods that match the CDC's standards for completeness, timeliness, and accuracy, and follow up, as necessary, with the health care provider making the report to verify completeness, timeliness, and accuracy.

(3) Authorized surveillance staff designated by the cabinet shall:

(a) Match the information from the reporting system to other public health databases, wherever possible, to limit duplication and to better quantify the extent of HIV infection in the Commonwealth;

(b) Conduct a biennial assessment of the HIV and AIDS reporting systems, insure that the assessment is available for review by the public and any state or federal agency, and forward a copy of the assessment to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare;

(c) Document the security policies and procedures and insure their availability for review by the public or any state or federal agency;

(d) Minimize storage and retention of unnecessary paper or electronic reports and insure that related policies are consistent with CDC technical guidelines;

(e) Assure that electronic transfer of data is protected by encryption during transfer;

(f) Provide that records be stored in a physically secluded area and protected by coded passwords and computer encryption;

(g) Restrict access to data a minimum number of authorized surveillance staff who are designated by a responsible authorizing official, who have been trained in confidentiality procedures, and who are aware of penalties for unauthorized disclosure of surveillance information;

(h) Require that any other public health program that receives data has appropriate security and confidentiality protections and penalties;

(i) Restrict use of data, from which identifying information has been removed, to cabinet-approved research, and require all persons with this use to sign confidentiality statements;

(j) Prohibit release of any ***names*** ~~[unique codes]~~ or any other identifying information that may have been received in a report to any person or organization, whether public or private, except in compliance with federal law or consultations with other state surveillance programs and reporting sources. Under no circumstances shall a ***name*** ~~[unique code]~~ or any identifying information be reported to the CDC; and

(k) Immediately investigate any report of breach of reporting, surveillance, or confidentiality policy, report the breach to the CDC, develop recommendations for improvements in security measure, and take appropriate disciplinary action for any documented breach.

(4) The cabinet shall require any physician or medical laboratory that receives a report of a positive test for the human immunodeficiency virus to report that information by reference to the ***name*** ~~[unique code]~~ in accordance with the procedure for establishing ***name reporting required*** ~~[the unique code established]~~ by the cabinet in an administrative regulation. ~~[The physician and medical laboratory shall maintain a log with the name of the patient who tested positive and the unique identifier assigned.]~~

SECTION 5. A NEW SECTION OF KRS CHAPTER 214 IS CREATED TO READ AS FOLLOWS:

(1) A person who discloses, intentionally in violation of subsection (5)(c) of Section 2 of this Act or subsection (5)(c) of Section 3 of this Act, the identity of a person upon whom has been conducted a test to detect human immunodeficiency virus infection shall be guilty of a Class A misdemeanor.

(2) A person who intentionally releases any name or other identifying information in violation of subsection (3)(j) of Section 4 of this Act shall be guilty of a Class A misdemeanor.

Approved April 9, 2004

CHAPTER 103

(HB 178)

AN ACT relating to student dropouts.

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

Section 1. KRS 158.145 is amended to read as follows:

(1) The General Assembly hereby finds that:

(a) Little progress has been made in reducing the state's student dropout rate;

(b) The number of school dropouts in Kentucky is unacceptable;

(c) The factors, such as lack of academic success, poor school attendance, lack of parental support and encouragement, low socioeconomic status, poor health, child abuse, drug and alcohol addictions, alienation from school and community, and other factors that are associated with an increased probability of students dropping out of school, occur long before the end of compulsory school age;

(d) Students who drop out of school before graduation are less likely to have the basic capacities as defined in KRS 158.645 and the skills as defined in KRS 158.6451;

(e) The number of school dropouts seriously interferes with Kentucky's ability to develop and maintain a well-educated and highly trained workforce;

(f) The effects of students dropping out of school can be felt throughout all levels of society and generations in increased unemployment and underemployment, reduced personal and family incomes, increased crime, decreased educational, social, emotional, and physical well-being, and in increased needs for government services; and

(g) The positive reduction in school dropouts can only be achieved by comprehensive intervention and prevention strategies.

(2) The General Assembly declares on behalf of the people of the Commonwealth the following goals to be achieved by the year 2006:

(a) The statewide annual average school dropout rate will be cut by fifty percent (50%) of what it was in the year 2000***. All students who drop out of a school during a school year and all students who have not graduated, fail to enroll in the school for the following school year, and do not transfer to another school, shall be included in the statewide annual average school dropout rate, except as provided in subsection (1)(b) of Section 2 of this Act***;

(b) No school will have an annual dropout rate that exceeds five percent (5%); and

(c) Each county will have thirty percent (30%) fewer adults between the ages of sixteen (16) and twenty-four (24) without a high school diploma or GED than the county had in the year 2000.

Section 2. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.

(b) Effective July 1, 2006, the Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%). ***A student shall be included in the annual average dropout rate if the student was enrolled in the school of record for at least thirty (30) days during the school year prior to the day he or she was recorded as dropping out of school. A student shall not be included in a school's annual average dropout rate if:***

1. The student is enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion or a General Educational Development (GED) diploma; or

2. The student has withdrawn from school and is awarded a General Educational Development (GED) diploma by October 1 of the following school year.

(c) A student enrolled in a district-operated or district-contracted alternative program shall participate in the appropriate assessments required by the Commonwealth Accountability Testing System established in KRS 158.6453.

(2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

(a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;

(b) School improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff under KRS 158.782;

(e) Evaluation of school personnel; and

(f) Student transfer to successful schools.

(4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:

1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;

2. Reviewing a school's learning environment, efficiency, and academic performance of students and the quality of the school council's data analysis and planning in accordance with KRS 160.345(2)(j);

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and

4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.

(b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal and report to the public on the resulting findings regarding each aspect of the schools' operations required under subparagraph 2. of paragraph (a) of this subsection.

(5) (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.

(b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%). ***All students who drop out of school during a school year shall be included in a school's annual average school dropout rate, except as provided in subsection (1)(b) of this section.***

2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.

(6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.

(7) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Section 3. KRS 158.146 is amended to read as follows:

(1) No later than December 30, 2000, the Kentucky Department of Education shall establish and implement a comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem in Kentucky public schools. In the development of the statewide strategy, the department shall engage private and public representatives who have an interest in the discussion. The statewide strategy shall build upon the existing programs and initiatives that have proven successful. The department shall also take into consideration the following:

(a) Analyses of annual district and school dropout data as submitted under KRS 158.148 and 158.6453;

(b) State and federal resources and programs, including, but not limited to, extended school services; early learning centers; family resource and youth service centers; alternative education services; preschool; service learning; drug and alcohol prevention programs; School-to-Careers; High Schools that Work; school safety grants; and other relevant programs and services that could be used in a multidimensional strategy;

(c) Comprehensive student programs and services that include, but are not limited to, identification, counseling, mentoring, and other educational strategies for elementary, middle, and high school students who are demonstrating little or no success in school, who have poor school attendance, or who possess other risk factors that contribute to the likelihood of their dropping out of school; and

(d) Evaluation procedures to measure progress within school districts, schools, and statewide.

(2) ***No state or federal funds for adult education and literacy, including but not limited to funds appropriated under KRS 164.041 or 20 U.S.C. sec. 9201 et seq., shall be used to pay for a high school student enrolled in an alternative program operated or contracted by a school district leading to a certificate of completion or a General Educational Development (GED) diploma.***

(3) The department, with assistance from appropriate agencies, shall provide technical assistance to districts requesting assistance with dropout prevention strategies and the development of district and schoolwide plans.

(4) ~~[(3)]~~ The department shall award grants to local school districts for dropout prevention programs based upon available appropriations from the General Assembly and in compliance with administrative regulations promulgated by the Kentucky Board of Education for this purpose. Seventy-five percent (75%) of the available dropout funds shall be directed to services for at-risk elementary and middle school students, including, but not limited to, identification, counseling, home visitations, parental training, and other strategies to improve school attendance, school achievement, and to minimize at-risk factors. Twenty-five percent (25%) of the funds shall be directed to services for high school students identified as likely to drop out of school, including, but not limited to, counseling, tutoring, extra instructional support, alternative programming, and other appropriate strategies. Priority for grants shall be awarded to districts that average, over a three (3) year period, an annual dropout rate exceeding five percent (5%).

(5) ~~[(4)]~~ The department shall disseminate information on best practices in dropout prevention in order to advance the knowledge for district and school level personnel to address the dropout problem effectively.

Approved April 9, 2004

CHAPTER 104

(HB 510)

AN ACT relating to delinquent taxes.

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

Section 1. KRS 67C.123 is amended to read as follows:

(1) The tax structure, tax rates, and level of services in effect in the city of the first class and its county upon the adoption of a consolidated local government shall remain in effect after the adoption of the consolidated local government and shall remain the same until changed by the newly elected consolidated local government council.

(2) ***All delinquent taxes of the former city of a first class in a consolidated local government shall be filed with the county clerk and shall be known as certificates of delinquency and shall be governed by the procedures set out in KRS Chapter 134 except that the certificate of delinquency on tax bills of the former city of the first class do not have to be advertised as set out in KRS 134.440 and may be paid or purchased directly from the clerk under the provisions of KRS 134.480 without a sheriff's sale pursuant to KRS 134.450.***

(3) Notwithstanding the provisions of KRS 67C.115(2), all contracts, bonds, franchises and other obligations of the city of the first class and of the county in existence on the effective date of a consolidated local government shall continue in force and effect as obligations of the consolidated local government and the consolidated local government shall succeed to all rights and entitlements thereunder. All conflicts in the provisions of the contracts, bonds, franchises, or other obligations shall be resolved in a manner that does not impair the rights of any parties thereto.

Section 2. KRS 67C.115 is amended to read as follows:

(1) Upon the successful passage of the question to consolidate a city of the first class and its county, all ordinances and resolutions of the previously existing city of the first class and all ordinances and resolutions of the county

shall become effective ordinances and resolutions of the consolidated local government until repealed, modified, or amended in accordance with the following order of precedence:

(a) If a city ordinance conflicts with a county ordinance, the county ordinance shall prevail and shall become effective countywide; and

(b) If a city ordinance addresses a subject matter not addressed by a county ordinance, the city ordinance shall become effective countywide; and

(c) If a county ordinance addresses a subject matter not addressed by a city ordinance, the county ordinance shall become effective countywide.

Notwithstanding paragraph (a) of this subsection and in the event a uniform land development code has not been jointly adopted by the city and county prior to the effective date of a consolidated local government, the historic preservation and landmarks ordinances, and the zoning regulations of the city adopted pursuant to KRS Chapter 100, shall prevail and become effective countywide.

(2) Ordinances and resolutions of either the city of the first class or its county in existence on the effective date of a local government consolidation which conflict with other provisions of this chapter shall be void. Except as provided in KRS 67C.123***(3)***~~[(2)]~~, any ordinance, resolution, or order in effect in a city of the first class or its county on the date a consolidated local government takes effect shall expire five (5) years from that date unless amended or reenacted by the consolidated local government.

(3) All ordinances of the city and county creating agencies and boards and interlocal agreements shall survive and be deemed reenacted by the council. All members may serve the balance of the terms to which they were appointed and until their successors are appointed and duly qualified according to law.

(4) For purposes of this section, a conflict shall be deemed to exist between ordinances or resolutions, or the provisions of this chapter, where any rights, remedies, entitlements, or the enforcement thereof cannot reasonably be reconciled.

(5) The county attorney shall serve as the legal advisor and representative to the consolidated local government and except for those duties pertaining to fiscal court set forth in KRS 69.210, the county attorney shall retain and exercise all other duties, powers, and rights delegated to that office by law.

(6) Wherever the words "county judge" or "county judge/executive" appear in any resolution or ordinance in existence in a city of the first class or in a county containing a city of the first class as of the effective date of the establishment of a consolidated local government, they shall be deemed to mean the mayor of the consolidated local government.

Section 3. KRS 134.420 is amended to read as follows:

(1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ten (10) years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, ***costs, reasonable attorney fees,*** and other expenses incurred by reason of delinquency in payment of the tax bill ***or certificate of delinquency*** or in the process of collecting ***either***~~[it]~~, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

(2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.

(3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.

(4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.

(5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:

(a) Is in property which:

1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and

2. Is covered by the terms of a written agreement entered into before tax lien filing; and

(b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Section 4. KRS 134.500 is amended to read as follows:

(1) ***Certificates of delinquency***~~[Uncollectible tax claims]~~ shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The ***five dollar ($5)*** sheriff's~~[add-on]~~ fee***, the advertising costs provided in Section 3 of this Act***~~[provided in KRS 134.430]~~, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section shall be ***included in***~~[excluded from]~~ the interest calculation~~[except]~~ in counties containing cities of the first class or consolidated local government ***and shall be excluded in other counties, except upon adoption of an ordinance by a county to include in the interest calculation the fees provided for in Section 3 of this Act, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section***. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he ***or she*** makes ***the***~~[his]~~ next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his ***or her*** duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him ***or her*** special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his ***or her*** full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney.

The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

(8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Section 5. KRS 134.460 is amended to read as follows:

(1) Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum simple interest. A fraction of a month is counted as an entire month. ***The total amount of the certificate of delinquency, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in Section 2 of this Act shall be included in the base for the interest calculation.***

(2) Certificates of delinquency shall be prima facie evidence that:

(a) The property represented by the certificate was subject to taxes levied thereon, and was assessed as required by law.

(b) The tax bill was valid and correct in all respects.

(c) The taxes were not paid at any time before the issuance of the certificate.

Section 6. KRS 134.500 is amended to read as follows:

(1) ***A certificate of delinquency***~~[Uncollectible tax claims]~~ shall bear interest at twelve percent (12%) per annum simple interest from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The ***total amount of the certificate of delinquency***~~[sheriff's add-on fee provided in KRS 134.430]~~, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section shall be ***included in the base for***~~[excluded from]~~ the interest calculation~~[except in counties containing cities of the first class or consolidated local government]~~. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners

whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

(8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

Approved April 9, 2004

CHAPTER 105

(HB 593)

AN ACT relating to economic development.

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

Section 1. KRS 147.075 is amended to read as follows:

As used in KRS 147.070 to 147.120 the term "Governor's Cabinet" shall mean the "Governor's Executive Cabinet" and such other persons as the Governor may designate to compose the membership of the "State Planning Committee. "The Governor shall serve as chairman of the State Planning Committee, ***and shall appoint a vice chairman from committee membership at his or her discretion.*** The~~[secretary of the Cabinet for Economic Development shall serve as vice chairman, and the]~~ special assistant to the Governor for budget and management shall serve as secretary.

Section 2. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;

(2) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;

(3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;

(4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;

(5) "Approved costs" means:

(a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

(e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

(f) All other costs of a nature comparable to those described above;

(6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;

(7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;

(8) "Average hourly wage" means the~~[most current]~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

(a) Manufacturing;

(b) Transportation, communications and public utilities;

(c) Wholesale and retail trade;

(d) Finance, insurance, and real estate; and

(e) Services;

(9) "Commonwealth" means the Commonwealth of Kentucky;

(10) (a) "Economic development project" means and includes:

1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;

2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;

3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness company pursuant to a ground lease having a term of sixty (60) years or more; and

4. The new construction of an electric generation facility;

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) or paragraph (b) of this subsection, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;

(11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;

(12) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;

(13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;

(14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;

(15) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;

(16) "Inducements" means the assessment and the income tax credits allowed by KRS 154.22-060;

(17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;

(18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;

(19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;

(20) "Revenues" shall not be considered state funds;

(21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8); and

(22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project.

Section 3. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a tax incentive agreement with respect to its economic development project, upon adoption of a resolution authorizing the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each tax incentive agreement shall be determined by negotiations between the authority and the approved company.

(1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.

(2) The approved company shall expend the authorized approved costs for the economic development project within three (3) years of the date of the final approval by the authority.

(3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.

(4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or fifteen (15) years after the activation date.

(5) The tax incentive agreement shall include the activation date. To implement the activation date, the approved company shall notify the authority, the Revenue Cabinet, and the approved company's employees of the activation date when the implementation of the inducements authorized in the tax incentive agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(6) ***The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.***

(7) The approved company shall comply with the hourly wage criteria set forth in KRS 154.22-040(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.

(8)~~[(7)]~~ The approved company may be permitted the following inducements during the term of the tax incentive agreement:

(a) A one-hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income of the approved company generated by or arising from the economic development project; and

(b) The aggregate assessments withheld by the approved company in each year.

(9)~~[(8)]~~ The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the period commencing with the date of final approval.

(10)~~[(9)]~~ The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042 on the Kentucky taxable income generated by or arising from the economic development project.

(11)~~[(10)]~~ The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(12)~~[(11)]~~ The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:

(a) Suspend the income tax credits and assessments available to the approved company;

(b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and

(c) Pursue any other remedy at law to which it may be entitled.

(13)~~[(12)]~~ All remedies provided in subsection ***(12)***~~[(11)]~~ of this section shall be deemed to be cumulative.

Section 4. KRS 154.23-010 is amended to read as follows:

As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

(1) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;

(2) "Approved costs" means:

(a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (6)(b)4. of this section:

1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;

3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;

4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and

6. All other costs of a nature comparable to those described above; or

(b) For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;

(3) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;

(4) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;

(5) "Average hourly wage" means the~~[most current]~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

(a) Manufacturing;

(b) Transportation, communications, and public utilities;

(c) Wholesale and retail trade;

(d) Finance, insurance, and real estate; and

(e) Services;

(6) "Commonwealth" means the Commonwealth of Kentucky;

(7) "Economic development project" or "project" means:

(a) A ***new or expanded service or technology activity conducted at a new or expanded site by:***

1. An approved company; or

2. An approved company and its affiliate or affiliates~~[service or technology activity conducted by an approved company]~~; or

(b) Any of the following activities of an approved company engaged in manufacturing:

1. The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in KRS 154.23-005 to 154.23-079, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;

2. The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under KRS 154.23-005 to 154.23-079;

3. The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; or similar activities as the authority may determine necessary for construction; and

4. The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under KRS 154.23-060;

(8) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;

(9) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;

(10) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;

(11) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;

(12) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;

(13) "Local government" means a city, county, or urban-county government;

(14) "Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;

(15) ***"Person" means an individual, sole proprietorship, partnership, registered limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;***

(16) "Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under KRS 154.23-005 to 154.23-079;

(17)~~[(16)]~~ "Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;

(18)~~[(17)]~~ "Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in KRS 154.23-015, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;

(19)~~[(18)]~~ "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;

~~[(19) "Relocation costs" mean identified expenditures by an eligible company for moving costs, separation costs, and any other expenditures substantiated by the eligible company that are directly related to a move from an existing location outside of a qualified zone to a qualified zone location;]~~

(20) "Rent" means:

(a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or

(b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and

(c) Rent shall include the customary cost of occupancy***, including***~~[that includes]~~ but~~[is]~~ not limited to property taxes, heating and air conditioning, electricity, ***water,*** sewer, and insurance;

(21) "Service and technology agreement" means any agreement entered into, under KRS 154.23-040, on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;

(22) ***(a)*** "Service or technology" means ***either:***

1. Any activity involving the performance of work except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities,

construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or

2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.

(b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state~~[any activity involving the performance of work not otherwise classified by division, including successor divisions of agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual," as revised by the United States Office of Management and Budget from time to time, or any successor publication]~~;

(23) "Start-up costs" ***means***~~[mean]~~ the ***acquisition*** cost ***associated with the project and related to***~~[of]~~ furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and ***the relocation of out-of-state equipment,***~~[relocation costs]~~ as verified and approved by the authority in accordance with KRS 154.23-040;

(24) "Tax incentive agreement" means that agreement entered into, pursuant to KRS 154.23-035, between the authority and an approved company with respect to an economic development project; and

(25) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company, of which more than fifty percent (50%) of the capital interest, or the interest in profits, is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended.

Section 5. KRS 154.23-015 is amended to read as follows:

(1) Upon written application by a county, urban-county government, or city of the first class, the authority shall certify one (1) to five (5) contiguous census tracts or a county certified by the authority in accordance with KRS 154.22-040 as a qualified zone. In the case of certification based on one (1) to five (5) contiguous census tracts, each census tract shall independently meet each of the following criteria, as verified by the Department for Employment Services within the Cabinet for Workforce Development:

(a) A minimum total poverty rate of one hundred fifty percent (150%) of the United States poverty rate as determined by the most recent decennial census;

(b) An unemployment rate that exceeds the statewide unemployment rate as determined on the basis of the most recent decennial census; and

(c) A minimum population density of two hundred percent (200%) of the average Kentucky census tract population density as determined by the most recent decennial census.

(2) Census tract information shall be based upon United States census data as set forth in the most recent edition of Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas published by the United States Bureau of the Census.

(3) The authority shall certify no more than one (1) qualified zone within each county of the Commonwealth, except in the case of a county certified under KRS 154.22-040, the entire county shall constitute the qualified zone.

(4) A qualified zone shall commence on the date of certification by the authority and continue thereafter, except that at the time new decennial census data becomes available, the authority shall decertify any census tract that no longer meets the criteria of subsection (1) of this section for qualified zone status. The authority shall not give preliminary approval to any project in a decertified census tract. An approved company whose project is located in a decertified census tract shall not be eligible for the inducements offered by KRS 154.23-005 to 154.23-079, unless the tax incentive agreement or service and technology agreement is entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that tract.

(5) ***If decertification causes a formerly certified contiguous census tract to become noncontiguous, the applicant shall have the discretion to eliminate or maintain the noncontiguous tract. If the applicant eliminates the noncontiguous tract, it may replace the noncontiguous tract with another qualifying census tract, subject to approval of the authority***~~[Decertification of a census tract by the authority under subsection (4) of this section shall not be construed to split a qualified zone, change the boundary of the initial qualified zone, or create more than one (1) qualified zone per county]~~.

(6) A county, urban-county government, or city of the first class shall have no authority to request decertification of a census tract, and any addition of a census tract requested by a county, urban-county government, or city of the first class under KRS 154.23-020 shall be contiguous to a census tract that continues to meet the criteria under this section.

(7) The authority shall pay its costs of counsel relating to zone certification.

Section 6. KRS 154.23-025 is amended to read as follows:

(1) Relevant standards for approval of eligible companies and economic development projects shall include but are not limited to creditworthiness of the eligible company, the number of new jobs to be provided by a project to Kentucky residents, and the likelihood that the project will be an economic success.

(2) An eligible company shall certify to the authority by written application that it makes the following commitments in an economic development project:

(a) A minimum investment of one hundred thousand dollars ($100,000) in the project;

(b) Creation of a minimum of ten (10) new full-time jobs at the project site for qualified employees ***by the activation date as set forth in Section 7 or Section 8 of this Act***;

(c) A statement that no significant number of existing jobs in the Commonwealth will be lost or adversely affected due to approval of the eligible company and its economic development project; and

(d) A statement that the economic development project could reasonably and efficiently locate outside the qualified zone and, without the inducements offered by the authority, the eligible company would likely locate outside the zone.

(3) (a) No project that will result in the replacement of an existing manufacturing or service or technology facility existing in the Commonwealth shall be approved by the authority; however, the authority may approve a project if the project is one:

1. a. That rehabilitates a manufacturing or service or technology facility that has not been in operation; or

b. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or

c. To which the title is vested in one other than the eligible company and that is sold or transferred under a foreclosure ordered by a court of competent jurisdiction or by order of bankruptcy court;

2. Replaces a manufacturing or service or technology facility existing in the Commonwealth that been damaged or destroyed by fire, or the title to which shall have been taken under the exercise of the power of eminent domain or is the subject of a nonappealable judgment that grants the power of eminent domain to the authority, in any of these events to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or

3. Replaces an existing manufacturing or service or technology facility located in the same qualified zone that cannot be expanded due to the lack of available real estate at or adjacent to the

manufacturing or service or technology facility to be replaced. Any economic development project satisfying the requirements of this paragraph of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the manufacturing or service or technology facility to be replaced.

(b) No economic development project otherwise satisfying the requirements of paragraph (a) of this subsection shall be approved by the authority that results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

(4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:

1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or

2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.

(b) If the base hourly wage calculated in subparagraph (a)1. or (a)2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

Section 7. KRS 154.23-035 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into a tax incentive agreement with any approved company engaged in manufacturing activities with respect to its economic development project. The terms and provisions of each tax incentive agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to the inclusion of the following mandatory provisions:

(1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.

(2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.

(3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.

(4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date.

(5) The tax incentive agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the tax incentive agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(6) The approved company shall comply with the hourly wage criteria set forth in KRS 154.23-025(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.

(7) The approved company may be permitted the following inducements during the term of the tax incentive agreement:

(a) A one-hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.401, to the Commonwealth by the approved company on the income of the approved company generated by or arising from the economic development project; and

(b) The aggregate assessments withheld by the approved company each year.

(8) The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with and after the date of final approval.

(9) The income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042 on the Kentucky taxable income generated by or arising from the economic development project.

(10) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(11) The tax incentive agreement shall provide that if the total number of full-time qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended ***for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority***~~[until at least ten (10) full-time qualified employees are employed by the approved company at the project site]~~.

(12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:

(a) Suspend the income tax credits and assessments available to the approved company***, pursuant to subsection (11) of this section***;

(b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and

(c) Pursue any other remedy at law to which it may be entitled.

(13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.

(14) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.

Section 8. KRS 154.23-040 is amended to read as follows:

(1) Before any approved company engaged in service or technology activity is granted inducements under KRS 154.23-005 to 154.23-079, a service and technology agreement with respect to the approved company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the service and technology agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to inclusion of the following mandatory provisions:

(a) The term of the service and technology agreement shall ***commence upon the activation date and shall terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date***~~[not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within a one (1) year time period after the date of final approval of the service and technology agreement by the authority]~~.

(b) The service and technology agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the service and technology agreement. If the approved company does not satisfy the minimum

investment and minimum employment requirements of Section 6 of this Act by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the service and technology agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of Section 6 of this Act within two (2) years from the date of final approval of the service and technology agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(c) In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the qualified statewide employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the service and technology agreement shall occur;

(d) ~~[(b)]~~ The approved company may be permitted the following inducements during the term of the service and technology agreement:

1. An income tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020 or 141.040 that would otherwise be due, determined under KRS 141.401, on the income of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and KRS 154.23-045; and

2. The assessment, if applicable, withheld by the approved company in each year;

(e) ~~[(c)]~~ The inducements allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed;

(f) ~~[(d)]~~ If the total number of ***full-time*** qualified employees at the site of the economic development project is less than ten (10), ***or in the case of an existing business the approved company fails to maintain the increase of at least ten (10) full-time qualified employees,*** the authorized inducements shall be suspended ***for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority*** ~~[until at least ten (10) full-time qualified employees are employed by the approved company at the project site]~~;

(g) ~~[(e)]~~ The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and

(h) ~~[(f)]~~ The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.

(2) Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be up to a maximum of fifty percent (50%) of the start-up costs.

(3) Each year, during the ten (10) year term of the service and technology agreement, up to fifty percent (50%) of the annualized rent shall be added to the unrecouped balance of approved costs, and the inducements earned shall be subtracted from the approved costs.

(4) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the accumulated inducements equal the unrecouped remaining balance of the approved costs then expended, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year.

(5) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the qualified statewide employees exceeds the remaining balance of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.

(6) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the assessment collected from the wages of the qualified statewide employees exceeds the unrecouped remaining balance of the approved costs then expended, the assessment collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments.

Section 9. KRS 154.23-055 is amended to read as follows:

(1) If the local jurisdiction in which the economic development project is to be located, approves the assessment in accordance with subsection (8) of this section, then an approved company engaged in either manufacturing or service or technology activities***, or, with the authority's consent, an affiliate of the approved company,*** may require each qualified statewide employee, as a condition to employment, to agree to pay an assessment in an amount determined by the percentage of the local occupational license fee, which shall be one-fifth (1/5) of the total assessment, plus the Commonwealth's contribution of four-fifths (4/5) of the total assessment, but in no event to exceed five percent (5%) of the qualified statewide employee's gross wages exclusive of any noncash benefits; provided that each qualified statewide employee paying the assessment shall be entitled to credits against Kentucky income tax as prescribed in subsection (4) of this section and to credits against the local occupational license fee to the extent of the local occupational license fee collected by the local jurisdiction. This assessment shall be deducted by the approved company from wages it pays to qualified statewide employees.

(2) Notwithstanding subsection (1) of this section, if no local occupational license fee is assessed by any local government in which the project is located, the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth.

(3) Notwithstanding subsection (1) of this section, if a project is located in only one (1) local government and that local government has a local occupational license fee that is less than one percent (1%) and the local government agrees to forgo all of its local occupational license fee or if a project is located in multiple local governments and the local governments have in the aggregate local occupational license fees that are less than one percent (1%) and the local governments agree to forgo all of their local occupational license fees, then the assessment shall be four percent (4%), all of which shall be contributed by the Commonwealth, plus the percentage of the local occupational license fee or fees, as applicable, that the local government or local governments, as applicable, has or have agreed to forgo.

(4) Each qualified statewide employee required to pay this assessment shall be entitled to certain credits, as follows:

(a) Credit against the required Kentucky income tax withheld from gross wages under KRS 141.310 equal to the Commonwealth's contribution, but in no event to exceed four percent (4%) of these wages; and

(b) Credit against the local occupational license fee imposed by any local government in which the project is located in the form of a simultaneous adjustment of the local occupational license fee withheld from gross wages excluding noncash benefits not to exceed one percent (1%) of these wages.

(5) If more than one (1) local government jurisdiction imposes a local occupational license fee and all jurisdictions approve the assessment, then the assessment and employee credit therefor shall be prorated against the local occupational license fees imposed, unless a single local government jurisdiction agrees to forgo receipt of its local occupational license fees in an amount equal to one percent (1%) of the qualified statewide employees' wages excluding noncash benefits, in which case no proration need be made.

(6) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction.

(7) An approved company that collects an assessment shall make its payroll, books, and records available to the authority at its request, and shall provide all documentation pertaining to the assessment as the authority may require.

(8) Before any tax incentive agreement or service and technology agreement becomes effective with respect to an assessment, the legislative body of any local government that assesses a local occupational license fee and shall

lose revenue as a result of the assessment described in this section shall, by official action, approve the assessment for the benefit of an approved company. However, if a local government does not approve the assessment, then the approved company shall not be permitted to impose the assessment and the qualified statewide employees shall not be permitted to claim credits.

(9) Any assessment of the wages of qualified statewide employees of an approved company engaged in service or technology activities in connection with their employment at an economic development project shall permanently cease at the expiration of the service and technology agreement.

Section 10. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

(1) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company, of which more than fifty percent (50%) of the capital interest, or the interest in profits, is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;

(2) "Agreement" means the service and technology agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project;

(3) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-100;

(4) "Approved costs" means fifty percent (50%) of the total of the start-up costs up to a maximum of ten thousand dollars ($10,000) per new full-time job created and to be held by a Kentucky resident subject to the personal income tax of the Commonwealth, plus fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;

(5) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;

(6) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;

(7) "Average hourly wage" means the~~[most current]~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

(a) Manufacturing;

(b) Transportation, communications, and public utilities;

(c) Wholesale and retail trade;

(d) Finance, insurance, and real estate; and

(e) Services;

(8) "Commonwealth" means the Commonwealth of Kentucky;

(9) "Economic development project" or "project" means ***a new or expanded service or technology activity conducted at a new or expanded site by:***

(a) An approved company; or

(b) An approved company and its affiliate or affiliates~~[a service or technology activity conducted by an approved company]~~;

(10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;

(11) "Employee benefits" means nonmandated costs paid by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;

(12) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;

(13) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;

(14) "In lieu of credits" means a local government appropriation to the extent permitted by law, or other form of local government grant or service benefit, directly related to the economic development project and in an amount equal to one percent (1%) of employees' gross wages, exclusive of any noncash benefits provided to an employee, or the provision by a local government of an in-kind contribution directly related to the economic development project and in an amount equal to one half (1/2) of the rent for the duration of the agreement;

(15) "Inducements" means the income tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;

(16) "Person" means an individual, sole proprietorship, partnership, registered limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;

(17) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;

(18) ~~["Relocation costs" means the identified expenditures by the company for moving costs, separation costs, and any other expenditures substantiated by the company which directly related to the move from an existing location outside of Kentucky to locations approved by the authority;~~

~~(19)]~~ "Rent" means:

(a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved activity for which the inducement has been granted; or

(b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved activity for which the inducement has been granted as determined by the authority using criteria which is customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized;

(c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;

(19) ***(a)*** ~~[(20)]~~ "Service or technology" means ***either:***

1. Any activity involving the performance of work except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or

2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.

(b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state~~[any activity involving the performance of work not otherwise classified by division, including successor divisions of agriculture, forestry and fishing, mining, construction, and manufacturing, in accordance with the "Standard Industrial Classification Manual," as revised by the United States Office of Management and Budget from time to time, or any successor publication. A company otherwise engaged in an ineligible activity may operate a service and technology activity in a separate division and, with the approval of the authority and subject to the record keeping requirements established by the authority, the service and technology activity may be deemed an eligible activity]~~; and

(20) ~~[(21)]~~ "Start-up costs" means the acquisition cost ***associated with the project related to the*** ~~[of]~~ furnishing and equipping the building for ordinary business functions, including computers, furnishings, office equipment, ***the relocation of out-of-state equipment*** ~~[relocation costs]~~, and nonrecurring costs of fixed telecommunication equipment as verified and approved by the authority in accordance with KRS 154.24-130.

Section 11. KRS 154.24-120 is amended to read as follows:

Before any approved company is granted inducements as prescribed in KRS 154.24-010 to 154.24-150, a service and technology agreement with respect to the company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(1) The term of an agreement shall not be longer than ten (10) years from the activation date established by the approved company. The activation date shall be any time within two (2) years after the date of final approval of the agreement by the authority. In order to implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, the employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the agreement shall occur.

(2) The agreement shall include:

(a) A description of the authorized inducements to be used by the approved company;

(b) A provision that, if the total number of full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15), or in the case of an existing Kentucky business the approved company fails to maintain the increase of at least fifteen (15) full-time employees who are residents of the Commonwealth and subject to the Kentucky income tax, the authorized inducements shall be suspended ***for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority*** ~~[until the number of full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax equals or exceeds fifteen (15); or in the case of an existing Kentucky business until the maintenance requirement of subsection (4) of KRS 154.24-140 is satisfied]~~;

(c) A provision that, if seventy-five percent (75%) or less of services provided by the approved company from the economic development project should be provided to persons located outside of the Commonwealth during any fiscal year of the approved company as prescribed in KRS 154.24-090, the authorized inducements shall be suspended ***for a period of up to one (1) year. If the percentage of these services does not exceed seventy-five percent (75%) within one (1) year from the initial date of suspension, the inducements may be terminated at the discretion of the authority*** ~~[until the percentage of these services again exceeds seventy-five percent (75%) for a full fiscal year of the approved company]~~; and

(d) A provision that neither income tax credits nor assessments are assignable without written consent by the authority.

Section 12. KRS 154.26-090 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved

costs, ***the amount of the license tax credit pursuant to Section 14 of this Act, and any limitations the authority may deem necessary,*** shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) ***The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs.***

(b) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant**.**~~[;]~~

(c)~~[(b)]~~ In consideration of the execution of the agreement, the approved company may be permitted during the time not to exceed ten (10) years during which the agreement is in effect, which time shall commence on the date of the agreement for purposes of the inducements:

1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project as determined under KRS 141.403;

2. A credit against the Kentucky license tax imposed by KRS 136.070~~[on the capital of the approved company generated by or arising out of the economic revitalization project]~~ as determined under KRS 136.0704; plus

3. The aggregate assessment withheld by the approved company in each year;

(d)~~[(c)]~~ The tax ***credits***~~[credit]~~ allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved cost]~~ that has not yet been recovered,~~[which fifty percent (50%) shall be]~~ reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the ***amount that the company may recover under paragraph (a) of this subsection***~~[entire fifty percent (50%) of the approved cost]~~ has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Revenue Cabinet of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

(e)~~[(d)]~~ The agreement shall provide that ***the***~~[:~~

~~1. The]~~ term shall not be longer than the earlier of:

1.~~[a.]~~ The date on which the approved company has received inducements or ***withheld***~~[withholds]~~ assessments equal to ***the amount that the company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs of its economic revitalization project]~~; or

2.~~[b.]~~ Ten (10) years from the date of the execution of the agreement.

(f)~~[2.]~~ Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

1.~~[a.]~~ A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or

2.~~[b.]~~ In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

(g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.

(h)~~[3.]~~If in any fiscal year of the approved company during which the agreement is in effect the total of the ***tax credits***~~[income tax credit]~~ granted to the approved company plus the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection***~~[fifty percent (50%) of the approved costs then expended]~~, the approved company shall pay the excess to the Commonwealth as income tax.

(i)~~[4.]~~ If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds ***the expended portion of the amount that the approved company may recover under paragraph (a) of this section***~~[fifty percent (50%) of the approved costs then expended]~~, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.

(j)~~[(e)]~~ All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.

(2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, ***it shall not assess the wages of an employee who is party to an individual employment contract with the approved company***~~[a vote of the employees shall be taken by the approved company to approve or disapprove the withholding of the assessment. The vote shall be conducted in a manner approved by the authority.~~

~~(3) If the approved company elects to utilize the assessment, neither the appropriation agreement, if it is so used, nor the agreement shall be executed unless the assessment is approved by a majority of the employees voting. If the approved company elects not to utilize the assessment, no employee vote shall be required for the execution of the agreement.~~

~~(4) A majority vote of the employees of the approved company voting in favor of the assessment shall authorize the approved company to invoke the assessment on all employees of the approved company.~~

~~(5) Notwithstanding the provisions of this section, no approved company shall assess the wages of an employee who is party to an individual employment contract with the approved company, or the wages of an employee whose wages will fall below applicable federal or state minimum wage standards if the job revitalization assessment fee is imposed]~~.

(3)~~[(6)]~~ Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

Section 13. KRS 154.26-100 is amended to read as follows:

(1) The approved company may require that each employee subject to the income tax imposed by KRS 141.020, whose job was preserved or created as a result of the project, as a condition of employment or the retention of employment, agree to pay an assessment, not to exceed, during any fiscal year of the approved company, ***five***

percent (5%)~~[six percent (6%)]~~ of the gross wages of each employee subject to the income tax imposed by KRS 141.020 whose job was retained or created as a result of the project***, unless:***

(a) ***The***~~[. However, if the]~~ appropriation agreement is consummated, ***in which case*** the assessment shall be ***four percent (4%)***~~[five percent (5%)]~~ of each employee's gross wages subject to the income tax imposed by KRS 141.020***;***

(b) The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the assessment shall equal four percent (4%) plus the percentage of the local occupational license fee that the local government or governments have agreed to forgo; or

(c) The local government or governments in which the project is located have no occupational license fee, in which case the assessment shall be four percent (4%).

(2) Each assessed employee shall be entitled to a credit against his Kentucky income tax required to be withheld under KRS 141.310 ***in the form of a simultaneous adjustment*** equal to ***four-fifths (4/5)***~~[two thirds (2/3)]~~ of the assessment***, unless:***

(a) ***The***~~[; or if the]~~ appropriation agreement is consummated, ***in which case*** the credit shall be equal to ***one hundred percent (100%)***~~[four-fifths (4/5)]~~ of the assessment***;***

(b) The local government or governments in which the project is located have a local occupational license fee of less than one percent (1%) and agree to forgo all of their local occupational license fee, in which case the credit shall be equal to the total assessment less the local occupational license fee; or

(c) If the local government or governments in which the project is located have no local occupational license fee, in which case the credit shall be equal to one hundred percent (100%) of the assessment.

(3) Each assessed employee also shall be entitled to a credit against his local occupational license fee in the form of a simultaneous adjustment of his local occupational license fee withholding equal to ***one-fifth (1/5)***~~[one-sixth (1/6)]~~ of the assessment, unless***:***

(a) The appropriation agreement is consummated***; or***

(b) The local occupational license fee is less than one percent (1%), in which case the credit shall equal the same amount as the local occupational license fee.

(4) If an approved company shall elect to impose the assessment as a condition of employment or the retention of employment, it shall deduct the assessment from each paycheck of each employee subject to subsections (2) and (3) of this section.

(5) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the authority at such reasonable times as the authority shall request, and shall file with the authority the documentation respecting the assessment the authority may require.

(6) Any assessment of the wages of the employees of an approved company pursuant to subsection (1) of this section shall permanently lapse upon expiration or termination of the agreement.

(7) By October 1 of each year, the Revenue Cabinet of the Commonwealth shall certify to the authority, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and job revitalization assessment fees taken during the prior calendar year by approved companies with respect to their economic revitalization projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits equal to its total inducements.

Section 14. KRS 136.0704 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" means a company approved under KRS 154.26-010 and subject to license tax under KRS 136.070;

(b) "Economic revitalization project" shall have the same meaning as set forth in KRS 154.26-010; and

(c) "Tax credit" means the tax credit allowed in KRS 154.26-090(1)***(c)***~~[(b)]~~2.

(2) An approved company ***that entered into a revitalization agreement prior to the effective date of this Act*** shall:

(a) Compute the company's total license tax due as provided by KRS 136.070; and

(b) Compute the license tax due excluding the capital attributable to an economic revitalization project.

(3) The tax credit shall be the amount by which the tax computed under subsection (2)(a) of this section exceeds the tax computed under subsection (2)(b) of this section; however, the credit shall not exceed the limits set forth in KRS 154.26-090.

(4) The capital attributable to an economic revitalization project shall be determined by a formula approved by the Revenue Cabinet.

(5) ***For an approved company that enters into a revitalization agreement after the effective date of this Act, the tax credit shall be negotiated pursuant to Section 12 of this Act, but shall not exceed one hundred percent (100%) of the computed license tax attributable to the location of the economic revitalization project. In no case shall the tax credit exceed the limits set forth in Section 12 of this Act.***

(6) The license tax attributable to a revitalization project shall be determined by a formula approved by the Revenue Cabinet.

(7) The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

SECTION 15. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) If, prior to the effective date of this Act, the authority has given its preliminary approval designating an eligible company as a preliminarily approved company and authorizing the undertaking of an economic revitalization project, but has not entered into a final agreement with the company, the company shall have the one-time option to:

(a) Operate under the existing agreement as preliminarily approved; or

(b) Request the authority to amend the agreement to comply with the amendments in Sections 12, 13, 14, and 21 of this Act.

(2) If, prior to the effective date of this Act, the authority has entered into a final agreement with an eligible company, and if the final agreement is still in effect, the company shall have the one-time option to:

(a) Operate under the existing final agreement; or

(b) Request the authority to amend only the employee assessment portion of the final agreement to comply with the amendment in Section 13 of this Act.

Section 16. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

(1) "Activation date" means a date selected by an approved company in the agreement at any time within the two (2) year period after the date of final approval of the agreement by the authority;

(2) "Affiliate" means the following:

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation: S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;

(3) "Agreement" means the tax incentive agreement entered into, pursuant to KRS 154.28-090, between the authority and an approved company with respect to an economic development project;

(4) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;

(5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;

(6) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;

(d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;

(e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

(f) All other costs comparable to those described above;

(7) "Assessment" means the job development assessment fee authorized by this section to KRS 154.28-100;

(8) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(9) "Average hourly wage" means the~~[most current]~~ wage and employment data published by the Department for Employment Services in the Kentucky Cabinet for Workforce Development collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

(a) Manufacturing;

(b) Transportation, communications, and public utilities;

(c) Wholesale and retail trade;

(d) Finance, insurance, and real estate; and

(e) Services;

(10) "Commonwealth" means the Commonwealth of Kentucky;

(11) (a) "Economic development project" or "project" means and includes:

1. The acquisition of ownership in any real estate by the approved manufacturing or agribusiness company or its affiliate;

2. The present ownership of real estate by the approved manufacturing or agribusiness company or its affiliate; or

3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more.

(b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a) of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall

include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraphs (a)3. and (b) of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall include the equipping of a facility with equipment but, for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of ten thousand dollars ($10,000) per job created by and maintained at the economic development project;

(12) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, trust, or any other entity engaged in manufacturing or agribusiness operations;

(13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;

(14) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;

(15) "Inducement" means the assessment or the Kentucky income tax credit as set forth in KRS 154.28-090;

(16) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals; and

(17) "State agency" shall have the meaning assigned to the term in KRS 56.440(8).

Section 17. KRS 154.28-090 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, an agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(1) The agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.

(2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.

(3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.

(4) The agreement shall include the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years from the activation date. To implement the activation date, the approved company shall notify the authority, the Kentucky Revenue Cabinet, and the approved company's employees of the activation date on which implementation of the inducements authorized in the agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of the economic development project under KRS 154.28-010(11) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

(5) ***The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.***

(6) The approved company shall comply with the wage criteria set forth in KRS 154.28-080(4) and provide documentation in connection with wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.

(7)~~[(6)]~~ The approved company may be permitted one of the following inducements during the term of the agreement and shall select the applicable inducement at the time of final approval by the authority:

(a) A one hundred percent (100%) credit against the Kentucky income tax that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.400, to the Commonwealth by the approved company on the income of the approved company generated by or arising from the economic development project; or

(b) The aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year.

(8)~~[(7)]~~ Either the total income tax credit or assessments may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with the date of final approval.

(9)~~[(8)]~~ If the approved company elects to use the income tax credit, the income tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042 on the Kentucky taxable income generated by or arising from the economic development project.

(10)~~[(9)]~~ The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.

(11)~~[(10)]~~ The agreement shall provide that if an approved company fails to comply with its obligations under the agreement then the authority shall have the right, at its option, to:

(a) Suspend either the income tax credits or assessments available to the approved company***, pursuant to subsection (5) of this section***;

(b) Pursue any remedy provided under the agreement, including termination thereof; and

(c) Pursue any other remedy at law to which it may be entitled.

(12)~~[(11)]~~ All remedies provided in subsection ***(11)***~~[(10)]~~ of this section shall be deemed to be cumulative.

(13)~~[(12)]~~ By October 1 of each year, the Revenue Cabinet shall certify to the authority, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic development projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken income tax credits or assessments equal to its total inducements.

Section 18. KRS 154.47-110 is amended to read as follows:

(1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the Kentucky Forest Products Council is established~~[and attached to the Cabinet for Economic Development for administrative purposes]~~.

(2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to, silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.

(3) The council shall be comprised of the following members:

(a)~~[The secretary of the Cabinet for Economic Development or his designee, who shall serve ex officio;~~

~~(b)]~~ The secretary of the Natural Resources and Environmental Protection Cabinet or his designee, who shall serve ex officio;

(b)~~[(c)]~~ The director of the Division of Forestry or his designee;

(c)~~[(d)]~~ The chairman of the University of Kentucky Department of Forestry or his designee;

(d)~~[(e)]~~ The chairman of the Kentucky Soil and Water Conservation Commission or his designee;

(e)~~[(f)]~~ A representative of the Kentucky Forest Industries Association appointed by the Governor;

(f)~~[(g)]~~ A representative of the primary wood products industry appointed by the Governor;

(g)~~[(h)]~~ A representative of the secondary wood products industry appointed by the Governor;

(h)~~[(i)]~~ A representative of the Kentucky Farm Bureau Federation appointed by the Governor;

(i)~~[(j)]~~ A certified tree farmer or forest steward appointed by the Governor;

(j)~~[(k)]~~ A representative of the Kentucky paper products industry appointed by the Governor; and

(k) ***Two representatives of public interest groups***~~[(l) A representative of a public interest group which is]~~ active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council; and one (1) from Kentuckians for the Commonwealth.

(4) The initial term of office of members appointed by the Governor shall be staggered so that the three (3) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and two (2) members shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.

(5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.

(6) The~~[Cabinet for Economic Development and the]~~ Natural Resources and Environmental Protection Cabinet shall provide staff services to the council.

Section 19. KRS 198A.035 is amended to read as follows:

(1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:

(a) The following ***ten (10)***~~[eleven (11)]~~ state government members, or their duly-appointed designees: the commissioner of education; commissioner of the Department for Local Government; commissioner of the Department of Housing, Buildings and Construction;~~[secretary of the Cabinet for Economic Development;]~~ secretary of the Cabinet for Families and Children; secretary of the Natural Resources and Environmental Protection Cabinet; secretary of the Cabinet for Health Services; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation.

(b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:

1. Public housing authorities;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;

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

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

(2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.

(3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.

(4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.

(5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.

(6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.

(7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.

(8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.

(9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.

(10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

Section 20. KRS 342.1224 is amended to read as follows:

(1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the Labor Cabinet, the secretary of the Cabinet for Economic Development ***or a designee***, the secretary of the Revenue Cabinet, and four (4) members who shall be appointed by the Governor.

(2) The four (4) appointed members shall include:

(a) One (1) member, selected from a list of three (3) submitted by the secretary of labor, who shall represent labor;

(b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers, provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth; and

(c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth; and

(d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth.

(3) The members of the board of directors shall serve a term of four (4) years, except that the initial terms of the members shall be staggered as follows:

(a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;

(b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;

(c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and

(d) The initial member appointed by the Governor to represent self-insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years.

(4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.

(5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.

(6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.

(7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.

(8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

Section 21. KRS 141.310 is amended to read as follows:

(1) Every employer making payment of wages on or after January 1, 1971, shall deduct and withhold upon the wages a tax determined under KRS 141.315 or by the tables authorized by KRS 141.370.

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which the wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, including Sundays and holidays, which have elapsed

since the date of the last payment of wages by the employer during the calendar year, or the date of commencement of employment with the employer during the year, or January 1 of the year, whichever is the later.

(4) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(5) The tables mentioned in subsection (1) of this section take into consideration the deductible federal income tax. If Congress changes substantially the federal income tax, the cabinet shall make the change in these tables necessary to compensate for any increase or decrease in the deductible federal income tax.

(6) The cabinet may permit the use of accounting machines to calculate the proper amount to be deducted from wages when the calculation so permitted produces substantially the same result set forth in the tables authorized by KRS 141.370. Prior approval of the calculation shall be secured from the cabinet at least thirty (30) days before the first payroll period for which it is to be used.

(7) The cabinet may, by regulations, authorize employers:

(a) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(b) To determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages estimated constituted the actual wages paid; and

(c) To deduct and withhold upon any payment of wages to the employee during the quarter the amount necessary to adjust the amount actually deducted and withheld upon the wages of the employee during the quarter to the amount that would be required to be deducted and withheld during the quarter if the payroll period of the employee was quarterly.

(8) The cabinet may provide by regulation, under the conditions and to the extent it deems proper, for withholding in addition to that otherwise required under this section and KRS 141.315 in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(9) Effective January 1, 1992, any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.24-110 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be four-fifths (4/5) of the amount of the assessment fee withheld from the employee or the Commonwealth's contribution of KRS 154.24-110(3) applies. If the provisions in KRS 154.24-150(3) or (4) apply, the offset, the offset shall be one hundred percent (100%) of the assessment.

(10) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees an assessment provided in KRS 154.22-070 or KRS 154.28-110 may offset the fee against the Kentucky income tax required to be withheld from the employee under this section.

(11) ***Any***~~[Effective January 1, 1992, any]~~ employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job assessment fee provided in KRS 154.26-100 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be ***four-fifths (4/5)***~~[two-thirds (2/3)]~~ of the amount of the assessment fee withheld from the employee, or if the agreement under KRS 154.26-090(1)***(f)***~~[(d)]~~2.~~[b.]~~ is consummated, the offset shall be ***one hundred percent (100%)***~~[four-fifths (4/5)]~~ of the assessment fee.

(12) Any employer required by this section to withhold Kentucky income tax who assesses and withholds from employees the job development assessment fee provided in KRS 154.23-055 may offset a portion of the fee against the Kentucky income tax required to be withheld from the employee under this section. The amount of the offset shall be equal to the Commonwealth's contribution as determined by KRS 154.23-055(1) to (3).

(13) Any employer required by this section to withhold Kentucky income tax may be required to post a bond with the cabinet. The bond shall be a corporate surety bond or cash. The amount of the bond shall be determined by the cabinet, but shall not exceed fifty thousand dollars ($50,000).

(14) The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of an employer's business until the bond is posted or the tax required to be withheld is paid or both. The action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the defendant.

Section 22. KRS 154.26-010 is amended to read as follows:

As used in ***this subchapter*** ~~[KRS 154.26-015 to 154.26-100]~~, unless the context clearly indicates otherwise:

(1) "Agreement" means a revitalization agreement entered into, pursuant to KRS 154.26-090, on behalf of the authority and an approved company with respect to an economic revitalization project;

(2) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;

(3) "Appropriation agreement" means an agreement entered into, pursuant to KRS 154.26-090(1)***(f)*** ~~[(d)]~~2.~~[b.]~~, among the approved company, the authority, and local governmental entities with respect to appropriations by these local governmental entities for the benefit of the approved company;

(4) "Approved company" means any eligible company approved by the authority pursuant to KRS 154.26-080 requiring an economic revitalization project;

(5) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an economic revitalization project;

(e) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewer treatment, gas, electricity, communications, and railroads, and including off-site construction of the facilities paid for by the approved company; and

(f) All other costs comparable with those described above;

(6) "Assessment" means the job revitalization assessment fee authorized by KRS 154.26-100;

(7) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;

(8) "Commonwealth" means the Commonwealth of Kentucky;

(9) "Economic revitalization project" or "project" means the acquisition, construction, equipping, and rehabilitation of machinery and equipment, constituting fixtures or otherwise, and with respect thereto, the construction, rehabilitation, and installation of improvements of facilities necessary or desirable for the acquisition, construction, installation, and rehabilitation of the machinery and equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are utilized to improve the economic situation of the approved company to allow the approved company to remain in operation and retain or create jobs;

(10) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity:

(a) Employing or intending to employ full-time a minimum of twenty-five (25) persons engaged in manufacturing or agribusiness operations at the same facility, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities where

manufacturing or agribusiness operations has been temporarily suspended and which meets the standards promulgated by the authority pursuant to KRS 154.26-080; or

(b) Having a base contract for annual delivery of at least four (4) million tons of coal mined within the Commonwealth and employing a minimum of five hundred (500) persons engaged in coal mining and processing operations at facilities, whether owned or leased, located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of an economic revitalization project, including facilities on or adjacent to where coal mining and processing operations have been temporarily suspended or severely reduced, and which meets the standards promulgated by the authority under KRS 154.26-080;

(11) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;

(12) "Inducements" means the Kentucky tax credit and the job revitalization assessment fee as prescribed in KRS 154.26-090 and 154.26-100;

(13) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;

(14) "Coal mining and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;

(15) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter; and

(16) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.

Section 23. KRS 148.851 is amended to read as follows:

As used in KRS 139.536 and KRS 148.851 to 148.860, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 148.859, on behalf of the authority and an approved company, with respect to a tourism attraction project;

(2) "Approved company" means any eligible company approved by the secretary of the Tourism Development Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project;

(3) "Approved costs" means:

(a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(b) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and

(g) All other costs comparable with those described in this subsection;

(4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;

(5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;

(6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Development Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee;

(7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;

(8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 148.851 to 148.860;

(9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;

(10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 148.851 to 148.860;

(11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;

(12) "Theme restaurant destination attraction" means a restaurant facility that~~[has]~~:

(a) ***Has*** construction, equipment, and furnishing costs in excess of five million dollars ($5,000,000);

(b) ***Has***~~[Seating capacity of four hundred fifty (450) guests, of which]~~ an annual average of not less than fifty percent (50%) ***of***~~[shall be]~~ guests who are not residents of the Commonwealth;

(c) ***Is***~~[Business plans that indicate that the attraction shall be]~~ in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;

(d)~~[Business plans that indicate that the attraction shall offer live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public, and shall offer a unique dining and cultural experience that is not available elsewhere in the Commonwealth; and~~

~~(e)]~~ ***Has*** food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; ***and***

(e) 1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;

2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or

3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;

(13) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, a theme restaurant destination attraction, or an entertainment destination center. A tourism attraction shall not include any of the following:

(a) Lodging facilities, unless:

1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;

2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;~~[or]~~

3. The facilities involve the reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than five hundred (500) guest rooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars ($10,000,000)***;***

4. The facilities involve the construction, restoration, rehabilitation, or upgrade of a full-service lodging facility which is or will be an integral part of a major convention or sports facility, with construction, restoration, rehabilitation, or upgrade costs exceeding six million dollars ($6,000,000); or

5. The facilities involve the construction, restoration, rehabilitation, or upgrade of a lodging facility which is or will be located:

a. In the Commonwealth within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and

b. Within any of the one hundred (100) least populated counties in the Commonwealth, in terms of population density, according to the most recent census; ~~[.]~~

(b) Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination attraction, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and

(c) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(14) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Approved April 9, 2004

CHAPTER 106

(HB 595)

A Concurrent Resolution to direct the Legislative Research Commission to study the advisability of allowing advanced registered nurse practitioners to prescribe Schedule II through V controlled substances.

WHEREAS, there is a shortage of physicians in rural areas, and advanced registered nurse practitioners help to improve access to care in lieu thereof; and

WHEREAS, there is some disagreement as to whether the advanced registered nurse practitioners' assuming the duty of prescribing Schedule II through V controlled substances is in the best interest of the patient; and

WHEREAS, over 45 states allow advanced registered nurse practitioners to prescribe controlled substances at various levels under a collaborative agreement with a licensed physician; and

WHEREAS, the advanced registered nurse practitioners are increasingly valued in providing medical services; and

WHEREAS, allowing the advanced registered nurse practitioners to prescribe medications provides terminally ill patients better access to care;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. The Legislative Research Commission shall conduct a study regarding the advisability of advanced registered nurse practitioners prescribing Schedule II to V controlled substances. The study shall survey and evaluate practices in other states and gather data and testimony from affected persons and professionals as to the efficacy of these practices.

Section 2. The Legislative Research Commission shall transmit the results of the study required by Section 1 of this Resolution to the appropriate committees by October 1, 2004.

Section 3. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 9, 2004

CHAPTER 107

(SB 14)

AN ACT relating to drug control.

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

Section 1. KRS 218A.202 is amended to read as follows:

(1) The Cabinet for Health Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy ***that has obtained a license, permit, or other authorization to operate from*** ~~[licensed by]~~ the Kentucky Board of Pharmacy.

(2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth or ***any other dispenser*** who ***has obtained a license, permit, or other authorization to operate from*** ~~[is licensed by]~~ the Kentucky Board of Pharmacy shall report to the Cabinet for Health Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

   (a) A drug administered directly to a patient; or

   (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

   (a) Patient identifier;

   (b) Drug dispensed;

   (c) Date of dispensing;

   (d) Quantity dispensed;

   (e) Prescriber; and

   (f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Health Services unless a waiver has been granted by the cabinet to an individual dispenser. ***The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.***

(6) The Cabinet for Health Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A ***Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace***~~[state, federal, or municipal]~~ officer whose duty is to enforce the laws of this ***Commonwealth, of another*** state***,*** or ***of*** the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;~~[or]~~

(f) ***In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:***

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;

2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or

(g) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

(7) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction***, except that:***

(a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report, if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and

(b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in paragraph (a) of subsection (6) of this section, or with a law enforcement officer designated in paragraph (b) of subsection (6) of this section.

(8)~~[(7)]~~ The Cabinet for Health Services, all ***peace officers specified in subsection (6)(b) of this section***~~[law enforcement officers]~~, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(9)~~[(8)]~~ The data and any report obtained therefrom shall not be a public record.

(10)~~[(9)]~~ Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.

(11)~~[(10)]~~ Knowing disclosure of transmitted data to a person not authorized by subsection (6) ***or (7)*** of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.

(12)~~[(11)]~~ The Governor's Office for Technology, in consultation with the Cabinet for Health Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:

(a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and

(b) Study the use of an interactive system that includes a relational data base with query capability.

(13)~~[(12)]~~ Provisions in~~[subsections (1) to (10) of]~~ this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection ***(12)***~~[(11)]~~ of this section.

(14) The Cabinet for Health Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

(15) (a) The Cabinet for Health Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.

(c) The cabinet shall work with the Justice Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

Section 2. KRS 218A.240 is amended to read as follows:

(1) All police officers and deputy sheriffs directly employed full-time by state, county, city, or urban-county governments, the State Police, the Cabinet for Health Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, to require the production of prescriptions, of books, papers, documents or other evidence, to employ special investigators, and to expend funds for the purpose of obtaining evidence.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health Services.

(4) Designated agents of the Cabinet for Health Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

(a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

(b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

(c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his costs, including a reasonable attorney's fee.

(d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.435, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his percentage of the funds shall go to the agency initiating the forfeiture action.

(6) The Cabinet for Health Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.

(7) (a) The Cabinet for Health Services shall use the data compiled in the electronic system created in Section 1 of this Act for investigations, research, statistical analysis, and educational purposes, and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a board responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances, if a report or analysis conducted under this subsection indicates that further investigation about inappropriate or unlawful prescribing or dispensing may be necessary by the board.

(b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure and the Board of Pharmacy, to be used to generate trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.

(c) The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system.

(d) Peace officers authorized to receive data under Section 1 of this Act may request trend reports not specifically published pursuant to paragraph (c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to subsection (4) of Section 1 of this Act, except that the report shall not identify an individual prescriber, dispenser, or patient.

(e) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.

SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The secretary of the Cabinet for Health Services may enter into reciprocal agreements with any other state or states of the United States to share prescription drug monitoring information if the other state's prescription drug monitoring program is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state as authorized by this section, priority shall be given to a state that is contiguous with the borders of the Commonwealth.

(2) In determining compatibility, the secretary shall consider:

(a) The essential purposes of the program and the success of the program in fulfilling those purposes;

(b) The safeguards for privacy of patient records and its success in protecting patient privacy;

(c) The persons authorized to view the data collected by the program;

(d) The schedules of controlled substances monitored;

(e) The data required to be submitted on each prescription;

(f) Any implementation criteria deemed essential for a thorough comparison; and

(g) The costs and benefits to the Commonwealth in mutually sharing particular information available in the Commonwealth's database with the program under consideration.

(3) The secretary shall review any agreement on an annual basis to determine its continued compatibility with the Kentucky prescription drug monitoring program.

(4) The secretary shall prepare an annual report to the Governor and the Legislative Research Commission that summarizes any agreement under this section and that analyzes the effectiveness of that agreement in monitoring the dispensing of controlled substances in the Commonwealth.

(5) Any agreement between the cabinet and another state shall prohibit the sharing of information about a Kentucky resident, practitioner, pharmacist, or other prescriber for any purpose not otherwise authorized by this section or Section 1 of this Act.

Section 4. KRS 315.0351 is amended to read as follows:

(1) Every pharmacy located outside this Commonwealth which, other than on an incidental basis, does business within this Commonwealth within the meaning of KRS Chapter 315, shall hold a current pharmacy permit as provided in KRS 315.035(1) and (4) issued by the Kentucky Board of Pharmacy. The pharmacy shall be designated an "out-of-state pharmacy" and the permit shall be designated an "out-of-state pharmacy permit." The fee for the permit shall not exceed the current in-state pharmacy permit fee as provided under KRS 315.035.

(2) Every out-of-state pharmacy granted an out-of-state pharmacy permit by the board shall disclose to the board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to residents of the Commonwealth. A report containing this information shall be made to the board on an annual basis and within thirty (30) days after any change of office, corporate officer, or pharmacist.

(3) Every out-of-state pharmacy granted an out-of-state pharmacy permit shall comply with all statutorily-authorized directions and requests for information from any regulatory agency of the Commonwealth and from the board in accordance with the provisions of this section. The out-of-state pharmacy shall maintain at all times a valid unexpired permit, license, or registration to conduct the pharmacy in compliance with the laws of the ***jurisdiction*** ~~[state]~~ in which it is a resident. As a prerequisite to seeking a permit from the Kentucky Board of Pharmacy, the out-of-state pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the ***jurisdiction*** ~~[state]~~ in which it is located. Thereafter, the out-of-state pharmacy granted a permit shall submit to the Kentucky Board of Pharmacy a copy of any subsequent inspection report on the pharmacy conducted by the regulatory or licensing body of the ***jurisdiction*** ~~[state]~~ in which it is located.

(4) Every out-of-state pharmacy granted an out-of-state pharmacy permit by the board shall maintain records of any controlled substances or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed.

(5) Records for all prescriptions delivered into Kentucky shall be readily retrievable from the other prescription records of the out-of-state pharmacy.

(6) Each out-of-state pharmacy shall, during its regular hours of operation, but not less than six (6) days per week and for a minimum of forty (40) hours per week, provide a toll-free telephone service directly to the pharmacist in charge of the out-of-state pharmacy and available to both the patient and each licensed and practicing in-state pharmacist for the purpose of facilitating communication between the patient and the Kentucky pharmacist with access to the patient's prescription records. A toll-free number shall be placed on a label affixed to each container of drugs dispensed to patients within the Commonwealth.

(7) Each out-of-state pharmacy shall have a pharmacist in charge who shall be responsible for compliance by the pharmacy with the provisions of this section.

Approved April 9, 2004

CHAPTER 108

(SB 16)

AN ACT relating to the report on dispensing prescription medications.

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

Section 1. KRS 205.561 is amended to read as follows:

(1) The cabinet shall submit a report to the Governor and the Legislative Research Commission on the dispensing of prescription medications to persons eligible under KRS 205.560, on or before October 31, 2003, and every third year thereafter.~~[Each report shall include a research study on costs incurred by pharmacies in the provision of prescription medications to Medicaid eligible recipients, including but not limited to dispensing fee costs and drug acquisition costs, the current level of dispensing fee provided by the cabinet and other third-party payors, and an estimate of any additional revenues needed to adjust reimbursement to pharmacies.]~~ The report shall also include current data on the most utilized and abused drugs in the Kentucky Medicaid program, a determination of factors causing high drug costs and drug usage rates of Medicaid recipients, and the effectiveness of the drug formulary and prior authorization process in managing drug costs. The report shall be reviewed by the Drug Management Review Advisory Board created under KRS 205.5636.

~~[(2) Prior to data collection for and analysis of the research study specified in subsection (1) of this section, the Cabinet for Health Services and any person or entity holding a contract to perform the study shall report to the Interim Joint Committee on Health and Welfare with the proposed research methodology for carrying out subsection (1) of this section.~~

~~(3) The research study specified in subsection (1) of this section shall include the following components:~~

~~(a) Recent academic review of the literature, previous research performed for the Department for Medicaid Services, and research from other states to determine the relevant factors to include in the study methodology;~~

~~(b) Analysis of relevant factors that influence dispensing and acquisition costs, including but not limited to:~~

~~1. Urban versus rural location;~~

~~2. Chain versus independent affiliation;~~

~~3. Total prescription volume;~~

~~4. Medicaid volume as a percent of the total volume; and~~

~~5. Profit;~~

~~(c) A representative sample of sufficient size appropriately stratified to make valid estimates of the effects of each of the relevant factors on dispensing and acquisition costs;~~

~~(d) Standard error for each estimate;~~

~~(e) Calculation of a ninety-five percent (95%) confidence interval for each sample estimate;~~

~~(f) Review of statistical tests of significance at the five percent (5%) significance level to determine if the variation in dispensing and acquisition costs occurs across the stratification types included in the study;~~

~~(g) A test for normality;~~

~~(h) Methodology to identify and exclude outliers;~~

~~(i) Analysis of the cost of administering the prior authorization program by the Department for Medicaid Services; and~~

~~(j) Comparison of the differences in reimbursement for dispensing fee costs and for drug acquisition costs between the Kentucky Medicaid program, other states' Medicaid programs, and commercial payors.]~~

(2)~~[(4)]~~ A reasonable fee for dispensing prescription medications shall be determined by the Department for Medicaid Services~~[based on a review of:~~

~~(a) The findings of the research study required under subsection (1) of this section;~~

~~(b) Dispensing fee reimbursement used by other state Medicaid programs; and~~

~~(c) Dispensing fee reimbursement used by commercial payors~~].

Section 2. KRS 205.6316 is amended to read as follows:

The Cabinet for Health Services shall review the procedures for medical assistance reimbursement of pharmacists to reduce fraud and abuse. The cabinet shall by promulgation of administrative regulation, pursuant to KRS Chapter 13A, establish the following:

(1) Point-of-sale computer technology, with integration of data at the physician's office and the pharmacy, that will permit prospective drug utilization review;

(2) Usage parameters by drug class to enable medical necessity and appropriateness reviews to be conducted prior to payment;

(3) A dialog among the Department for Medicaid Services, the Kentucky Medical Board of Licensure, and the Kentucky Board of Pharmacy, to develop recommendations for legislation for the 1996 Regular Session of the General Assembly that will strengthen the generic substitution laws for prescription medication; and

(4) A dispensing fee for each prescription[~~ considering the findings of the research study report submitted by the cabinet pursuant to KRS 205.561~~].

Approved April 9, 2004

CHAPTER 109

(SB 34)

AN ACT relating to home inspectors.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 20 of this Act, unless otherwise provided:

(1) "Applicant" means an individual who applies for a license as a home inspector.

(2) "Board" means the Kentucky Board of Home Inspectors established in Section 3 of this Act.

(3) "Client" means an individual who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report.

(4) "Department" means the Kentucky Department of Housing, Buildings, and Construction.

(5) "Home inspection" means a visual analysis for the purpose of providing a professional opinion by a licensed home inspector, of the condition of a residential dwelling and the dwelling's attached garages and carports, any reasonable accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for systems and components in the standards of practice established by the board. Home inspection shall not include a code compliance inspection, or an inspection required under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder, or KRS 227.600 regarding manufactured homes.

(6) "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after a home inspection. The report shall include the following:

(a) A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient;

(b) The inspector's recommendation to repair or monitor deficiencies reported under paragraph (a) of this subsection;

(c) A list of any systems or components that were designated for inspection in the standards of practice adopted by the board but that were not inspected; and

(d) The reason a system or component listed under paragraph (c) of this subsection was not inspected.

(7) "Licensee" means a person who performs home inspections and who is licensed under Sections 1 to 20 of this Act as a home inspector.

(8) "Residential dwelling" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 20 of this Act shall apply to an individual who conducts home inspections for compensation, but shall not apply to the following:

(1) An individual who is acting within the scope of the individual's employment as:

(a) A code enforcement official for the state or a political subdivision of the state; or

(b) A representative of a state or local housing agency or an individual acting under the authority of the United States Department of Housing and Urban Development;

(2) An individual who is acting within the scope of the individual's license as a licensed:

(a) Architect under KRS Chapter 323;

(b) Professional engineer under KRS Chapter 322;

(c) Plumbing contractor or journeyman plumber under KRS Chapter 318;

(d) Electrician, master electrician, or electrical contractor under KRS Chapter 227A;

(e) Liquefied petroleum gas dealers under KRS Chapter 234; or

(f) Master heating, ventilation, and air conditioning contractor, journeyman heating, ventilation, and air conditioning mechanic, or an apprentice heating, ventilation, and air conditioning mechanic under this chapter;

(3) An individual licensed under KRS Chapter 324 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license;

(4) An individual who is licensed under KRS Chapter 324A as a real estate appraiser and is acting within the scope of the individual's license;

(5) An individual who holds a license under KRS Chapter 304 as an insurance adjuster and is acting within the scope of the individual's license;

(6) An individual who holds a permit, certificate, or license to:

(a) Use and apply pesticides; or

(b) Make diagnostic inspections and reports for wood destroying pests and fungi under KRS Chapter 217B and is acting within the scope of the individual's certificate or license;

(7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license;

(8) An individual who holds a current and valid license, certificate, or permit under KRS 227.550 to 227.660 and is acting within the scope of the individual's license, certificate, or permit as a:

(a) Manufactured home retailer;

(b) Manufactured home certified retailer; or

(c) Manufactured home certified installer; or

(9) Employees of the Department of Housing, Buildings and Construction or the State Fire Marshall's Office acting in their official capacities as inspectors of buildings and manufactured housing.

SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) There is created a board to be known as the Kentucky Board of Home Inspectors.

(2) The board shall be composed of ten (10) members appointed by the Governor.

(a) Five (5) of the members shall:

1. Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed one hundred (100) fee paid inspections per year over the last five (5) years;

2. Be licensed by the board as a home inspector; and

3. Be appointed as follows:

a. One (1) person shall be a member of the American Society of Home Inspectors;

b. One (1) person shall be a member of the Kentucky Real Estate Inspectors Association;

c. One (1) person shall be a member of the National Association of Home Inspectors; and

d. Two (2) persons shall be either at-large licensed home inspectors or owners or managers of a home inspection company actively performing home inspections within the Commonwealth of Kentucky. The company and its owner or manager shall have been actively engaged in the home inspection profession in Kentucky for a minimum of five (5) years. The company shall employ or contract with multiple licensed home inspectors in good standing with the Kentucky Board of Home Inspectors.

These five (5) members shall be selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of six (6) members, two (2) each from the American Society of Home Inspectors, the Kentucky Real Estate Inspectors Association, and the National Association of Home Inspectors respectively.

(b) The other five (5) board members shall be qualified as follows:

1. One (1) person shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;

2. One (1) person shall be a licensed real estate salesperson or broker under KRS Chapter 324 who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;

3. One (1) person shall represent the public at-large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names;

4. One (1) person shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute; and

5. The Executive Director of the Office of Housing, Buildings, and Construction, or his or her designee shall be a member of the board.

(3) A board member required to have a license in accordance with subparagraph 3. of paragraph (a) of subsection (2) of this section, shall obtain the requisite license in accordance with Section 7 of this Act, on or before July 1, 2006. If a board member does not obtain the requisite license on or before July 1, 2006, the board member shall be considered to have resigned from the board on July 1, 2006, and the Governor shall fill the vacancy in accordance with this section. If a board member resigns for failure to obtain a home inspectors license, the actions of the board member and board before July 1, 2006, shall be valid and viable.

(4) The members of the board shall be residents of Kentucky.

(5) The initial terms of office for the nine (9) members appointed to the board by the Governor are as follows:

(a) Three (3) members for a term of three (3) years;

(b) Three (3) members for a term of two (2) years; and

(c) Three (3) members for a term of one (1) year.

Thereafter, all members shall serve a term of three (3) years.

(6) The initial terms begin July 15, 2004.

(7) The Governor may remove a board member at any time for incompetence, neglect of duty, or unprofessional conduct.

(8) If a vacancy occurs in the membership of the board, the Governor shall appoint an individual to serve for the remainder of the unexpired term who has like qualifications required of the member who created the vacancy.

(9) A member shall not serve on the board for more than six (6) consecutive years.

(10) Each year the board shall elect a member as chairperson and a member as vice chairperson.

(11) The chairperson and vice chairperson shall serve in their respective capacities for no more than one (1) year consecutively and until a successor is elected.

(12) The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.

(13) If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.

(14) The board shall meet at least quarterly each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.

(15) The chairperson shall establish the date, time, and place for each meeting.

(16) A majority of the current members of the board constitutes a quorum.

(17) The affirmative vote of a majority of the members appointed to the board is necessary for the board to take official action.

(18) Each member of the board is entitled to a minimum salary of thirty-five dollars ($35) per diem. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101.

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall:

(1) Through the promulgation of administrative regulations:

(a) Determine the requirements for and prescribe the form of licenses, applications, and other documents that are required by Sections 1 to 20 of this Act; and

(b) Require that a home inspection report include a statement that the home inspection report does not address environmental hazards, which shall be listed with specificity by the board;

(2) Grant, deny, suspend, and revoke approval of examinations and courses of study regarding home inspections;

(3) Issue, deny, suspend, and revoke licenses in accordance with Sections 1 to 20 of this Act;

(4) Investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with Sections 1 to 20 of this Act or administrative regulations promulgated under Sections 1 to 20 of this Act, and, when appropriate, take action in accordance with Sections 15 and 16 of this Act;

(5) Bring actions in the name of the state in an appropriate court in order to enforce compliance with Sections 1 to 20 of this Act or the administrative regulations promulgated under Sections 1 to 20 of this Act;

(6) Establish fees in an amount not to exceed two hundred and fifty dollars ($250) annually;

(7) Inspect the records of a licensee in accordance with administrative regulations promulgated by the board;

(8) Conduct or designate a member or other representative to conduct public hearings on any matter for which a hearing is required under Sections 15 and 16 of this Act and exercise all powers granted under KRS Chapter 13B;

(9) Adopt a seal containing the words "Kentucky Board of Home Inspectors" and, through the board's secretary, certify copies and authenticate all acts of the board;

(10) Use counsel, consultants, and other persons, enter into contracts, and authorize expenditures that are reasonably necessary or appropriate to administer and enforce Sections 1 to 20 of this Act and administrative regulations promulgated thereunder;

(11) Establish continuing education requirements for licensed home inspectors in accordance with Sections 12 and 13 of this Act;

(12) Maintain the board's office, files, records, and property in the city of Frankfort;

(13) Require all fee-paid home inspections to be conducted in accordance with the standards of practice of:

(a) The American Society of Home Inspectors;

(b) The National Association of Home Inspectors; or

(c) Any other approved standards of practice that are equal to the standards of practice of the organizations in paragraphs (a) and (b) of this subsection.

The board may establish standards of practice for home inspectors licensed in Kentucky at a later date, which will supersede any other standards of practice previously adopted by the board.

(14) Exercise all other powers specifically conferred on the board under Sections 1 to 20 of this Act; and

(15) Promulgate administrative regulations to carry out the effective administration and the requirements of Sections 1 to 20 of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The department shall provide the board with:

(1) Clerical or other assistants, including investigators, necessary for the proper performance of the board's duties;

(2) A place to hold board meetings and hearings; and

(3) Office equipment and office space for board records, staff, and other effects necessary to carry out the requirements of Sections 1 to 20 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) There is established in the State Treasury a revolving fund for the use by the board.

(2) All fees and other money received by the board in accordance with Sections 4, 7, 8, 12, and 13 of this Act shall be deposited in the revolving fund established in subsection (1) of this section.

(3) No part of this revolving fund shall revert to the general fund.

(4) The compensation of board members and all of the board's expenses incurred by the board shall be paid from this revolving fund, except the assistance set forth in Section 5 of this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) An individual shall not advertise or claim to be a licensed home inspector and shall not conduct a home inspection for compensation without first obtaining a license as a home inspector.

(2) The board shall deny a license to any applicant who fails to:

(a) Furnish evidence satisfactory to the board, showing that the individual:

1. Is at least eighteen (18) years of age;

2. Has graduated from high school or earned a Kentucky or other state's general educational development (GED) diploma; and

3. Meets other criteria established by the board.

(b) Verify the information submitted on the application form;

(c) Complete a board approved training program or course of study involving the performance of home inspections, and pass an examination prescribed or approved by the board;

(d) Submit to the board a certificate of insurance that is acceptable to the board and that:

1. Is issued by an insurance company or other legal entity authorized to transact insurance business in Kentucky;

2. Provides for general liability coverage of at least two-hundred and fifty thousand dollars ($250,000);

3. Lists the state as an additional insured;

4. States that cancellation and nonrenewal of the underlying policy is not effective until the board receives at least ten (10) days prior written notice of the cancellation or nonrenewal; and

5. Contains any other terms and conditions established by the board.

(e) Pay a licensing fee established in Section 4 of this Act.

(3) A person applying for a license as a home inspector shall apply on a written or electronic form prescribed and provided by the board.

SECTION 8. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The licensing requirements for a home inspector may be waived for a person moving to Kentucky from another jurisdiction, and the person may be granted a license as a home inspector if the person meets the following requirements:

(a) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;

(b) The person is licensed in the other jurisdiction;

(c) The licensing requirements of the other jurisdiction are substantially similar to the requirements of Sections 1 to 20 of this Act; and

(d) The person states that he or she has studied, is familiar with, and will abide by Sections 1 to 20 of this Act and the administrative regulations promulgated by the board.

(2) A person seeking a license as a home inspector under this section shall:

(a) Apply on a form prescribed and provided by the board; and

(b) Pay the applicable licensing fee established by the board.

SECTION 9. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) A nonresident whom the board determines meets the requirements of Sections 1 to 20 of this Act and who files the written consent described in subsection (2) of this section may be licensed as a home inspector in Kentucky.

(2) A nonresident applicant shall file with the board a written consent stating that, if licensed:

(a) The applicant agrees to the commencement of any action arising out of the conduct of the applicant's business in Kentucky in the county in which the events giving rise to the cause of action occurred;

(b) The applicant:

1. Agrees to provide to the board the name and address of an agent to receive service of process in Kentucky; or

2. Consents to the board acting as the applicant's agent for the purpose of receiving service of process if:

a. An agent's name and address have not been filed with the board; or

b. The agent's name and address on file with the board are incorrect; and

(c) The applicant agrees that service of process in accordance with the Kentucky Rules of Civil Procedure is proper service and subjects the applicant to the jurisdiction of Kentucky courts.

SECTION 10. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

All licenses issued by the board shall remain the property of the board.

SECTION 11. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

A licensee shall notify the board within thirty (30) days of any change of:

(1) Name;

(2) Name under which the licensee conducts business; or

(3) Business address.

SECTION 12. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The initial license for a home inspector issued in accordance with Sections 1 to 20 of this Act, shall expire on the last day of the licensee's birth month in the following year. The board may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months.

(2) Renewed licenses shall expire on the last day of the licensee's birth month of each even numbered year after the date of issuance of the renewed license.

(3) An individual who applies to renew a license as a licensed home inspector shall:

(a) Furnish evidence showing successful completion of the continuing education requirements of this section;

(b) Pay the renewal fee established by the board; and

(c) Show proof of general liability insurance in the amount required by subsection (2)(d) of Section 7 of this Act.

(4) Renewal notices shall be sent to each licensee at least sixty (60) days prior to the expiration of the license. The notice shall inform the licensee of the need to renew and the requirement of payment of the renewal fee. If this notice of expiration is not sent by the board, the licensee is not subject to a sanction for failure to renew if, once notice is received from the board, the license is renewed within forty-five (45) days of the receipt of the notice.

(5) Renewal fees shall be paid with a draft, a money order, a cashier's check. a certified or other personal check, or if payment is made in person, the payment may be made in cash. If the board receives an uncertified personal check for the renewal fee and if the check does not clear the bank, the board may refuse to renew the license.

(6) Before the end of each license period, each licensee shall complete the continuing education required by the board. This requirement shall not exceed thirty (30) hours per two (2) year license cycle. This requirement shall be effective beginning January 1, 2005.

(7) The board may, through the promulgation of administrative regulations:

(a) Establish an inactive license for licensees who are not actively engaging in the home inspection business but wish to maintain their license;

(b) Reduce license and renewal fees for inactive licenses; and

(c) Waive the insurance requirements established in Section (7) of this Act for inactive licenses.

SECTION 13. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall promulgate administrative regulations concerning the continuing education required for the renewal of a home inspector license and shall:

(1) Establish procedures for approving organizations that provide continuing education; and

(2) Prescribe the content, duration, and organization of continuing education courses that contribute to the competence of home inspectors.

SECTION 14. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "political subdivision" means any city, county, or consolidated local government.

(2) No agency or political subdivision of the state, other than the board, shall impose the following on individuals licensed under Sections 1 to 20 of this Act:

(a) A registration or licensing requirement; or

(b) A license fee to obtain any local license, except that this prohibition shall not prevent any local government from imposing an occupational license tax on any person operating as a home inspector within the jurisdiction of the local government.

SECTION 15. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of Sections 1 to 20 of this Act or any administrative regulations promulgated to carry out Sections 1 to 20 of this Act.

SECTION 16. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The procedures set forth in KRS Chapter 13B shall govern the board's conduct of disciplinary hearings.

(2) The board may summarily suspend a license for up to ninety (90) days before a final adjudication or during an appeal of the board's determination, if the board finds that the licensee would represent a clear and immediate danger to the public's health, safety, or property if allowed to perform home inspections. The summary suspension may be renewed upon a hearing before the board for up to ninety (90) days.

(3) If the board:

(a) Determines that an individual is not licensed under Sections 1 to 20 of this Act and is engaged in or believed to be engaged in activities for which a license is required under Sections 1 to 20 of this Act, the board shall issue an order to that individual requiring the individual to show cause why the individual should not be ordered to cease and desist from the activities. The show cause order shall set forth a date, time, and place for a hearing at which the individual shall appear and show cause why the individual should not be subject to licensing under Sections 1 to 20 of this Act;

(b) After a hearing, determines that the activities in which the individual is engaged are subject to licensing under Sections 1 to 20 of this Act, the board may issue a cease and desist order that identifies the individual and describes activities that are the subject of the order.

(4) A cease and desist order issued under this section shall be enforceable in a Circuit Court of the Commonwealth.

SECTION 17. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) An individual is guilty of a Class B misdemeanor under KRS 534.040 if the individual:

(a) Performs or offers to perform home inspections for compensation without being licensed as a home inspector and without being exempt from licensing;

(b) Presents as the individual's own the license of another;

(c) Intentionally gives false or materially misleading information to the board or to a board member in connection with a licensing matter;

(d) Impersonates another licensee; or

(e) Uses an expired, suspended, revoked, or an otherwise restricted license.

(2) When entering a judgment for a violation, the court shall add to any penalty imposed, the amount of any fee or other compensation earned by the individual in the commission of the violation.

(3) Each transaction involving unauthorized activities as described in this section, shall constitute a separate violation.

(4) In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief shall allege and prove that, at the time that the cause of action arose, the party seeking relief was not in violation of Section 7 of this Act.

(5) The general counsel for the Department of Housing, Buildings and Construction shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this section.

SECTION 18. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) An action for damages, whether brought in contract or tort, or on any other basis, based on professional services that were rendered or that should have been rendered by a licensed home inspector shall not be brought, commenced, or maintained unless the action is filed within one (1) year of the time that the claimant knew or should have known of a deficient inspection and damages and injuries resulting therefrom.

(2) Nothing in this section creates any duty to a third party that is not available under common law.

SECTION 19. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) An individual who performs home inspections after the effective date of this Act, does not violate Sections 2 and 7 of this Act , and shall not be disciplined or sanctioned for failure to have a home inspector's license if the person obtains a home inspector's license not later than July 1, 2006.

(2) Notwithstanding the requirements of Section 7 of this Act, the board may issue to an individual, upon the individual's application and payment of fees, a home inspector license if the individual:

(a) Meets the requirements of Section 7 of this Act, excluding paragraph (2)(c) of Section 7 of this Act; or

(b) Has been engaged in the practice of home inspections for at least one (1) year prior to enactment of Sections 1 to 20 of this Act and documents the performance of at least twenty-five (25) home inspections performed for compensation in the previous twelve (12) months or at least one hundred (100) home inspections performed for compensation in the individual's career.

(3) The board may consider and accept the successful completion of equivalent licensing requirements in another state or local jurisdiction instead of one (1) or more of the requirements of Section 7 of this Act, if those requirements meet or exceed the requirements of Section 7 of this Act.

(4) This section shall expire January 1, 2007.

SECTION 20. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Home inspectors are prohibited from indicating in writing in the initial home inspection report, that any condition is not in compliance with any building code enforced under KRS Chapter 198B.

SECTION 21. A NEW SECTION OF KRS CHAPTER 21 IS CREATED TO READ AS FOLLOWS:

As used in Sections 21 to 27 of this Act, unless the context otherwise requires:

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a home inspector to assert a claim, whether by complaint, counterclaim, or cross-claim, for damages or the loss of use of real or personal property caused by a deficient home inspection or home inspection report regarding the inspection of a home. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a deficient home inspection or home inspection report;

(2) "Claimant" means a client who asserts a claim against a home inspector concerning a deficient home inspection or home inspection report regarding the inspection of a home;

(3) "Home" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied;

(4) "Home inspector " means a person licensed in accordance with Sections 1 to 27 of this Act; and

(5) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

SECTION 22. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

Sections 21 to 27 of this Act shall:

(1) Apply to any claim that arises before, on, or after July 15, 2004, as the result of a deficient home inspection or home inspection report regarding the inspection of a home, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 15, 2004;

(2) Prevail over any conflicting law otherwise applicable to the claim or cause of action;

(3) Not bar or limit any claim or defense otherwise available except as otherwise provided in Sections 21 to 27 of this Act; and

(4) Not create a new theory upon which liability may be based.

SECTION 23. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

In a claim to recover damages resulting from a deficient home inspection or home inspection report regarding the inspection of a home, a home inspector is liable for his or her acts or omissions or the acts or omissions of his or her agents or employees and is not liable for any damages caused by:

(1) The acts or omissions of a person other than the home inspector or his or her agent or employee; or

(2) Any construction defect disclosed to a claimant before his or her purchase of the home, if the disclosure was provided in writing and in language that is understandable and was signed by the claimant.

SECTION 24. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) In every deficient home inspection or home inspection report action brought against a home inspector, the claimant shall serve written notice of claim on the home inspector. The notice of claim shall state that the claimant asserts a deficient home inspection or home inspection report claim against the home inspector and shall describe the claim in reasonable detail sufficient to determine the general nature of the deficiency.

(2) Within twenty-one (21) days after service of the notice of claim, the home inspector shall serve a written response on the claimant by registered mail or personal service. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection; or

(c) State that the home inspector disputes the claim.

(3) (a) If the home inspector disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the home inspector pursuant to subsection (2) of this section, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the inspection proposal or settlement offer, then at any time thereafter the home inspector may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim.

(4) (a) If the claimant elects to allow the home inspector to inspect in accordance with the home inspector's proposal pursuant to subsection (2)(a) of this section, then the claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to inspect the premises.

(b) Within fourteen (14) days following completion of the inspection, the home inspector shall serve on the claimant:

1. A written offer to remedy the defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the remedy necessary to cure the defect described in the claim, and a timetable for the completion of this remedy;

2. A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

3. A written statement that the home inspector will not proceed further to remedy the defect.

The claimant shall have the right to accept or reject the proposed remedy, or the monetary offer to settle the claim.

(c) If the home inspector does not proceed further to remedy the defect within the agreed timetable, or if the home inspector fails to comply with the provisions of paragraph (b) of this subsection, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the home inspector pursuant to paragraph (b)1. or 2. of this subsection to either remedy the defect or to compromise and settle the claim by monetary payment, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection notice, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the offer made pursuant to paragraph (b)1. or 2. of this subsection, then at any time thereafter the home inspector may terminate the offer by serving written notice to the claimant.

(5) (a) Any claimant accepting the offer of a home inspector to remedy the defect pursuant to subsection (4)(b)1. of this section shall do so by serving the home inspector with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty (30) days after receipt of the offer. The claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to perform and complete the remedy by the timetable stated in the offer.

(b) The claimant and home inspector may, by written mutual agreement, alter the extent of remedy or the timetable, including but not limited to repair of additional defects.

(6) If a claimant files a complaint, counterclaim, or cross-claim prior to meeting the requirements of this section, then the court may issue an order holding the action in abeyance until the parties comply with this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the deficient home inspection or home inspection report claim described in the notice of claim if the home inspector fails to perform the remedy agreed upon or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose.

SECTION 25. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) The home inspector shall upon entering into a contract for the inspection of a building or residence, provide notice to each client, of the home inspector's right to offer to cure a deficient home inspection or home inspection report before a client may commence litigation against the home inspector. The notice shall be conspicuous and may be included as part of the underlying contract signed by the client.

(2) The notice required by this section shall be in substantially the following form: "CHAPTER 411 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE HOME INSPECTOR OF YOUR RESIDENCE. YOU MUST DELIVER TO YOUR HOME INSPECTOR A

WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE THAT YOUR HOME INSPECTOR FAILED TO INCLUDE IN THE HOME INSPECTION REPORT AND PROVIDE YOUR HOME INSPECTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE HOME INSPECTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT."

(3) Sections 21 to 27 of this Act shall not preclude or bar any action if notice is not given to the client as required by this section.

SECTION 26. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in Sections 21 to 27 of this Act shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and home inspectors during the process of inspection, and nothing in Sections 21 to 27 of this Act precludes the termination of those relationships as allowed under other law.

(2) Noncompliance by the client with Section 24 of this Act shall not operate as an affirmative defense in an action against a home inspector by the client for emergency repairs.

SECTION 27. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

If a written notice of claim is served under Section 24 of this Act, then the statute of limitation for the underlying action is tolled until seventy-five (75) days after the expiration of the time frame agreed to by the parties under subsection (2) of Section 24 of this Act, or the date established for inspection pursuant to paragraph (a) of subsection (2) of Section 24 of this Act, or the expiration of the time frame contained in paragraph (b) of subsection (4) of Section 24 of this Act, whichever occurs later.

Section 28. KRS 198B.030 is amended to read as follows:

(1) There is hereby created the Kentucky department of housing, buildings and construction within the cabinet for public protection and regulation. The governor shall appoint a commissioner to head the department by July 1, 1978. The commissioner shall receive for his services such compensation as the governor shall determine.

(2) The commissioner may employ sufficient staff to carry out the functions of his office. Neither the commissioner nor any member of his staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the department of housing, buildings and construction.

(3) The department shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the commissioner in addition to those duties otherwise delegated to him by the governor or prescribed for him by law.

(4) The department may enter into contracts with the federal government, other agencies of state government or with its subdivisions, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.

(5) Subject to the direction of the board of housing, buildings and construction, the commissioner shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the commissioner shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.

(6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the department.

(7) The commissioner is authorized to receive, for and on behalf of the state, the department, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the

state treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.

(8) The Kentucky Board of Home Inspectors established in Section 3 of this Act shall be attached to the department for administrative purposes.

Approved April 9, 2004

CHAPTER 110

(SB 63)

AN ACT relating to fire safety.

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

SECTION 1. A NEW SECTION OF KRS 383.010 TO 383.285 IS CREATED TO READ AS FOLLOWS:

(1) Any public or private institution of postsecondary education which operates or acts as agent for an on-campus housing facility within the Commonwealth shall disclose to any potential lessee as to whether the on-campus housing facility is or is not equipped with an automatic fire suppression system.

(2) Except as provided in subsection (4) of this section, a two (2) part written disclosure statement separate from other rental documents, with typeface of no less than fourteen (14) points, shall be signed by both parties acknowledging that disclosure of the presence or lack of an automatic fire suppression system has been made.

(3) The potential lessee shall be given a copy of the disclosure form and a copy shall be retained by the lessor for the duration of the rental agreement. At the end of each calendar year, institutions of postsecondary education shall make available, upon request from the state fire marshal or any local fire official, a copy of the disclosure form and an affidavit certifying that disclosure as to whether or not the premises were equipped with an automatic fire suppression system were provided as part of any rental agreement.

(4) If the institution has an automatic fire suppression system in place and properly functioning at every on-campus housing facility under the control of the institution, the institution shall be exempt from this section.

Approved April 9, 2004

CHAPTER 111

(SB 96)

AN ACT relating to postsecondary education finance.

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

Section 1. KRS 164.740 is amended to read as follows:

As used in KRS 164.740 to 164.7891, the terms listed below shall have the following meanings:

(1) "Authority" means the Kentucky Higher Education Assistance Authority.

(2) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority.

(3) ~~["Business school" means any business school which is accredited by the Accrediting Commission for Independent Colleges and Schools or any successor recognized by the United States Department of Education, and which provides a program of study leading to the granting of a postsecondary degree or diploma.~~

~~(4) "College" means an institution governed by the board of regents of the Kentucky Community and Technical College system or any postsecondary educational institution of higher learning which is accredited by a regional accrediting association recognized by the United States Department of Education, and which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.~~

~~(5) ~~"Eligible institution" means***, unless otherwise specified in this chapter,*** any educational institution or class of institutions designated ***as an institution of higher education*** pursuant to ***section 102 of*** the federal act***, 20 U.S.C. section 1002,***~~[or this chapter]~~ as eligible to participate in***, and that actively participates in, the Federal Pell Grant Program or, for purposes of insured student loans, is defined as an eligible institution pursuant to section 435 of the federal act, 20 U.S.C. section 1085***~~[authority administered programs]~~, provided that no right of participation shall be deemed vested pursuant to this subsection in any institution, including, but not by way of limitation, any college, school of nursing, vocational school, or business school.

(4)~~[(6)]~~ "Eligible lender" means any entity described as eligible pursuant to the federal act to make or originate insured student loans, provided that no right of participation shall be deemed vested hereby in any lender.

(5)~~[(7)]~~ "Eligible student" means any student enrolled or accepted for enrollment at a participating institution, meeting the criteria established by the federal act and this chapter for the various authority administered programs.

(6)~~[(8)]~~ "Endorser" means a person who signs a student loan promissory note as an accommodation party, in the manner of KRS 355.3-419, and is secondarily liable for payment on such note.

(7)~~[(9)]~~ "Federal Act" means the Higher Education Act of 1965, Pub. L. 89-329, as amended.

(8)~~[(10)]~~ "Grant" means a gift of money, tuition discount, waiver of tuition and fees, or other monetary award that requires neither employment nor repayment, except under conditions prescribed by the board, and is based on demonstrated financial need and such other terms and conditions as the board may prescribe.

(9)~~[(11)]~~ "Honorary scholarship" means a certificate of merit or achievement or other appropriate document which may be issued by the board to students in recognition of superior academic ability or achievement or a special talent.

(10)~~[(12)]~~ "Insured student loan" means a loan to an eligible borrower, who is qualified under the federal act, on which the payment of principal and interest is insured as evidenced by a loan guarantee issued by the authority and reinsured by the secretary under the federal act.

(11)~~[(13)]~~ "Loan" means an advance of money, to be used exclusively for payment of educational expenses, evidenced by a promissory note or similar instrument requiring repayment under specified conditions.

(12)~~[(14)]~~ "Loan guarantee" means the certificate, document, or endorsement issued by the authority as evidence of insurance of a loan as to both principal and interest and of reinsurance by the secretary under the federal act.

(13)~~[(15)]~~ "Participating institution" means any eligible institution, to the extent that it offers an eligible program of study, having a contract in force with the authority, if required by the authority, on such terms as the authority may deem necessary or appropriate to the administration of its programs.

(14)~~[(16)]~~ "Participating lender" means any eligible lender, including the authority and the Kentucky Higher Education ***Student*** Loan Corporation, which has in force a contract with the authority providing for loan guarantee to be issued by the authority under the federal act and this chapter.

(15)~~[(17)]~~ "Penal institution" means any penitentiary, detention facility, adult correctional facility, jail, or other similar institution operated by the state, local, or federal government or by private business.

(16)~~[(18)]~~ "Recognition award" means an advance of money to or on behalf of a student in recognition of superior academic ability, achievement or special talent.

(17)~~[(19)]~~ "Regional accrediting association" means the Middle States Association of Colleges and Schools, Commission on Higher Education; New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, Higher Learning Commission; Northwest Association of Schools and Colleges, Commission on Colleges; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(18)~~[(20)]~~ "Scholarship" means a gift of money to provide an incentive for fulfillment of a particular public purpose which may be based on ***any combination of*** financial need~~[and]~~ superior academic ability~~[or]~~ achievement~~[or]~~ a special talent***, or special condition serving a public purpose*** and such other terms and conditions as the board may prescribe.

(19)~~[(21) "School of nursing" means any training program in the field of nursing, including one regarding nurse aides, which is accredited by the Kentucky Board of Nursing Education and Nurse Registration, or any successor, and which provides a program of study leading to the granting of a postsecondary degree or diploma.~~

~~(22)]~~ "Secretary" means the United States Secretary of Education.

~~[(23) "Vocational school" means a vocational technical school accredited by the Accrediting Commission for Career Schools and Colleges of Technology or the National Council for Workforce Education, or any successor recognized by the United States Department of Education, which provides a program of study leading to the granting of a postsecondary degree, diploma, or certificate.]~~

(20)~~[(24)]~~ "Work study" means an award of money disbursed by the board at specified intervals to students, or as reimbursement to employers of students, who provide needed services for a specified number of hours in a capacity approved by the board.

Section 2. KRS 164.748 is amended to read as follows:

The board shall have the following powers, functions, and duties:

(1) To provide loan guarantees, upon terms and conditions the board may prescribe within the limitations provided by KRS 164.740 to 164.770, and the federal act in respect of loans to eligible borrowers. The board may require additional security, including endorsers it deems necessary and desirable and is not in contravention of the federal act. The purpose of the loans shall be to assist individuals in meeting the expense of their education.

(2) To enter into agreements and undertakings with the secretary as may be required and necessary pursuant to the federal act in order to constitute the authority as a state agency qualified and empowered to insure student loans within the meaning of the federal act and to qualify insured student loans for interest payments, reimbursement, reinsurance, and other benefits available under the federal act to the authority.

(3) To issue loan guarantees in respect of loans made to eligible borrowers by participating lenders, including the authority.~~[No eligible borrower shall obtain an insured student loan from more than one (1) participating lender without prior approval by the board.]~~ No loan guarantee shall be issued, executed, and delivered by the authority unless any insured student loan resulting shall be the subject of agreements pursuant to the federal act by which the insured student loan is made the subject of interest payments, reimbursements, reinsurance, and other benefits to the extent provided by the federal act.

(4) To promulgate administrative regulations pursuant to KRS Chapter 13A pertaining to insured student loans, loan guarantees, loans, and work-study payments and the awarding of grants, scholarships, and honorary scholarships, as provided in KRS 164.740 to ***164.7891***~~[164.785]~~.

(5) To enter into contracts with eligible lenders, approved by the state to lend moneys, upon terms and conditions agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans.

(6) To enter into contracts with eligible institutions, upon terms and conditions agreed upon between the authority and the eligible institution, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans.

(7) To receive funds from any source, public or private, by gift, grant, bequest, loan, or otherwise, either absolutely or in trust, and to expend them, on behalf of the authority and for any of its purposes; and to acquire from any source, public or private, by purchase, lease, gift, bequest, or devise, any property, real, personal, or mixed, absolutely or in trust, and to hold, administer, and dispose of it, on behalf of the authority and for any of its purposes. The authority shall not make its debts payable out of any funds except those of the authority.

(8) To administer federal funds allotted to the state in respect of insured student loans, loan guarantees, loans, work-study, grants, ***scholarships,*** administrative costs, and related matters.

(9) To sue and be sued in the name of the authority and to plead and be impleaded, and to purchase, on behalf of members of the board or officers and employees of the authority, liability insurance for individual protection from liability for acts and omissions committed in the course and scope of the individual's employment or service.

(10) To collect from individual borrowers loans made by the authority and insured student loans on which the authority has been compelled to meet its loan guarantee obligations following the inability of the participating lender involved to collect the insured student loans.

(11) To gather information on all loans, scholarships, honorary scholarships, grants, and work-study opportunities available to Kentucky residents attending or planning to attend an eligible institution and to disseminate the information through the methods of mass communication necessary to ensure that Kentucky residents are aware of financial resources available to those attending or desiring to attend an eligible institution.

(12) To request reports from each eligible institution or eligible lender necessary for the effective performance of its duties and to publish the information it deems necessary.

(13) To approve, disapprove, limit, suspend, or terminate the participation of, or take emergency action to withhold authority funds and insured student loans from eligible institutions or eligible lenders in programs administered by the board, subject to the provisions of the federal act and this chapter.

(14) To perform other acts necessary or appropriate to carry out effectively the purposes of the authority as provided by KRS 164.740 to 164.7891 and KRS 164A.010 to 164A.380.

(15) If any conflict exists between KRS 164.740 to 164.770 and the federal act, which conflict would result in a loss by the authority of any federal funds, including, but not by way of limitation, federal funds made available to the authority under the federal act, including interest payments and reimbursement for insured student loans in default, to promulgate regulations and policies consistent with the federal act not in derogation of the Constitution and general laws of the Commonwealth.

(16) Except where specifically prohibited by law, to secure data from any other Commonwealth of Kentucky agency or instrumentality or from any other source in furtherance of any purposes of the authority related to any program or function administered by the authority.

(17) To enter into contracts with public or private nonprofit agencies, eligible to hold or insure student loans under the federal act, to provide for the exchange of information, not in contravention of any federal or state law, or the provision of services necessary to the administration of the authority's insured student loan programs.

(18) To enter into contracts with the Kentucky Higher Education Student Loan Corporation***, the Kentucky Educational Savings Plan Trust, and the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund*** as ***necessary or appropriate to facilitate their common administration, operation, and management,*** as required pursuant to KRS Chapter 164A.

(19) To conduct, in accordance with KRS Chapter 13B, administrative hearings pertaining to any adverse action by the authority affecting participating institutions and lenders, eligible students, and borrowers of loans made by the authority and insured student loans guaranteed by the authority. Wage garnishment hearings and administrative review procedures pertaining to disputes concerning setoff of federal tax refunds shall be exempt under KRS 13B.020 and shall be conducted in accordance with applicable federal law. In an exempt hearing, the board or a hearing officer designated by the board may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to the issues in dispute. Compliance with the subpoenas shall be enforceable by a court of competent jurisdiction.

(20) To provide upon termination of the retirement plan authorized by Executive Order 75-964 to active and retired employees of the authority who participated in that plan, health insurance premiums and disability insurance benefits as provided to employees who participate in a state-administered retirement system pursuant to KRS 18A.225 to 18A.229, 61.600, and 61.702.

(21) To delegate to the executive director general supervision and direction over the administrative function of the authority and its employees in carrying out the policies, programs, administrative regulations, and directives of the board.

Section 3. KRS 164.753 is amended to read as follows:

(1) In the instance of loans, the rules and regulations adopted by the board may include, but not be limited to, those which:

(a) Are necessary to qualify the authority as an insured lender under the Higher Education Act of 1965, as amended;

(b) Require that loans be made only to those eligible students who are unable to secure comparable loans from private lenders; and

(c) Are necessary to qualify the authority as a lender under the Public Health Service Act, as amended.

(2) In the instance of insured student loans and loan guarantees, the rules and regulations adopted by the board shall include, but not be limited to, those which are necessary to qualify the authority to insure loans under the federal act, as amended, and following such qualification to issue loan guarantees to participating lenders on any loans advanced by such lenders to eligible students attending or planning to attend any participating institution.

(3) In the instance of scholarships, except scholarships provided pursuant to KRS 164.518, the rules and regulations adopted by the board shall include, but not be limited to, those which:

(a) Specify ways in which superior academic achievement or ability or special talents will be identified and measured;

(b) Ensure that the amount of scholarship to a student attending or planning to attend a participating institution will not exceed the ***student's total cost of attendance*** ~~[financial need of the student as determined in accordance with paragraph (f) of this subsection]~~, or the maximum scholarship as established by the board, whichever is less;

(c) Restrict scholarships to persons who are classified as resident students under the rules and regulations of the Council on Postsecondary Education;

(d) Ensure that scholarships are awarded only to eligible students who have applied for such federal, state, or institutional student financial assistance programs as the authority may require;

(e) Ensure that scholarships are awarded only to eligible students who are planning to enroll, accepted for enrollment, or are enrolled ~~[as full-time students]~~ in a participating institution; and

(f) ***If eligibility for the scholarship is based on financial need,*** ensure, by such needs analysis as the authority may require, that the person is in need of the assistance in order to enroll in or complete an eligible program of study as defined by the board.

(4) In the instance of grants, the rules and regulations adopted by the board shall include, but not be limited to, those which:

(a) Ensure that the amount of a grant to a student will not exceed the financial need of the student as determined in accordance with paragraph (e) of this subsection or the maximum grant as established by the board, whichever is less;

(b) Restrict grants to persons who are classified as resident students under the rules and regulations of the Council on Postsecondary Education;

(c) Ensure that grants are awarded only to eligible students who have applied for such federal, state, or institutional student financial assistance programs as the authority may require;

(d) Ensure that grants are awarded only to eligible students who are planning to enroll, accepted for enrollment, or are enrolled ~~[as full-time students]~~ in a participating institution; and

(e) Ensure, by such needs analysis as the authority may require, that grants be made only to students who have insufficient financial resources to enroll in or complete an eligible program of study as defined by the board.

(5) Funds appropriated to the financial assistance program established by KRS 164.780 and 164.785 shall be administered by the board in accordance with the provisions of KRS 164.780 and 164.785.

(6) In the instance of work-study payments, rules and regulations adopted by the board shall include, but not be limited to, those which require that:

(a) The employment opportunity available for the student will not interfere with the student's normal progress toward a degree, diploma, or certificate;

(b) Contracts to promote increased employment opportunities for eligible students will not result in the displacement of employed workers or impair existing contracts for services; and

(c) The work-study payment will not exceed the financial need of the student or the maximum payment as established by the board, whichever is less.

Section 4. KRS 164.7535 is amended to read as follows:

Notwithstanding KRS 164.753(4)(d), the Kentucky Higher Education Assistance Authority may award college access program grants pursuant to KRS 164.753(4), to the extent funds are available for the purpose, to financially needy part-time and full-time undergraduate students, including students enrolled in a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation***. Grants shall be awarded only to students***~~[,]~~ enrolled or accepted for enrollment at participating institutions~~[that are colleges, business schools, schools of nursing, or vocational schools]~~ located within the Commonwealth. Grants under this section~~[to recipients attending colleges]~~ shall be awarded only for attendance in a program of study of at least two (2) academic years' duration~~[that leads to a degree, and shall not exceed the prevailing amount charged for tuition at publicly supported community colleges in Kentucky]~~. Grants under this section shall be awarded ***only*** to students enrolled or accepted for enrollment ***for attendance in a program of study that leads to a degree, except that grants shall be awarded to students enrolled or accepted for enrollment*** at publicly-operated vocational-technical institutions~~[only]~~ for attendance in a program of study~~[of at least two (2) academic years' duration]~~ that leads to a certificate**,**~~[or]~~ diploma***, or degree***. Awards to recipients attending ***participating institutions accredited by a regional accrediting association shall not exceed the prevailing amount charged for tuition at publicly-supported community and technical colleges in Kentucky, and awards to recipients attending other participating institutions***~~[business schools, schools of nursing, or vocational schools]~~ shall not exceed the prevailing amount charged for tuition at publicly-operated vocational-technical institutions in Kentucky. The provisions of this section shall not limit the authority's capability to use funds appropriated for this purpose to match federal funds, make grant awards, adopt administrative regulations that conform to the requirements of federal laws and regulations for full participation in federally-funded student financial assistance programs.

Section 5. KRS 164.785 is amended to read as follows:

(1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:

(a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education;

(b) Has been accepted by or is enrolled as a full-time student in a ***program of study leading to a postsecondary degree at a*** Kentucky independent college or university which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of a sectarian instruction. An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph; and

(c) Has not previously attended college or university~~[for]~~ more than ***the maximum number of academic terms established by the authority in administrative regulations***~~[seven (7) semesters or the equivalent]~~.

(2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.

(3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.

(4) The need of each applicant shall be determined by acceptable need analysis such as ***use of the free application for federal student aid in conjunction with Part E of the federal act, 20 U.S.C. sections 1087kk through 1087vv***~~[the parents' confidential statement of the college scholarship service]~~, and such other analyses as the authority may determine, subject to the approval by the United States Secretary of Education.

(5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

Section 6. KRS 164.7881 is amended to read as follows:

(1) Eligible high school students who have graduated from high school and eligible postsecondary students who have earned a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and a supplemental award, or a supplemental award only pursuant to KRS 164.7879(3)(c), shall be eligible to

receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or a supplemental award only for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.

(2) To receive the Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, an eligible high school or postsecondary student shall:

(a) Enroll in and attend a participating institution as a full-time student or a part-time student; and

(b) Maintain eligibility as provided in subsection (3) of this section.

(3) Eligibility for a Kentucky educational excellence scholarship or a Kentucky educational excellence scholarship and supplemental award shall terminate upon the earlier of:

(a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or

(b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, for a cumulative total of eight (8) academic terms if the student enrolls as at least a part-time student in a four (4) year program.

(4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible postsecondary student for an award period shall be ***delivered*** ~~[disbursed]~~ by the authority to the ***participating institution for disbursement to the*** eligible postsecondary student~~[in two (2) installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period]~~.

(b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible postsecondary student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible postsecondary student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible postsecondary student***, except if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period***.

(c) 1. An eligible postsecondary student who is enrolled full-time in an undergraduate program of study, in the pharmacy program at the University of Kentucky, or in a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation, shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study.

2. To retain the maximum award for the second award period, an eligible postsecondary student shall have at least a 2.5 grade point average at the end of the first award period***, except that if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this subsection, retain the maximum award for the award period in which he or she resumes enrollment***.

3. To retain the maximum award amount for subsequent award periods, an eligible postsecondary student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period***, except that if the eligible postsecondary student interrupts enrollment during the award period for any reason specified in subsection (5) of this section, and the participating institution does not certify a cumulative grade point average for that student at the end of that award period, the eligible postsecondary student shall, subject to paragraph (b) of this***

subsection, retain the same award for the award period in which he or she resumes enrollment as he or she received in the award period in which enrollment was interrupted.

4. ~~[2.]~~ Any eligible postsecondary student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.

5. ~~[3.]~~ Any eligible postsecondary student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.

6. ~~[4.]~~ Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each Kentucky educational excellence scholarship recipient enrolled as a full-time or part-time student at the participating institution.

7. ~~[5.]~~ Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

(5) The expiration of a student's ***eight (8) academic terms and*** five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:

(a) A serious and extended illness or injury of the student, certified by an attending physician;

(b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;

(c) Natural disasters that would render a student unable to attend classes; or

(d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.

(6) An eligible postsecondary student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or the supplemental award only for a maximum of ten (10) academic terms. The expiration of an eligible postsecondary student's five (5) year eligibility shall be extended to six (6) years for eligible postsecondary students meeting the requirements of this subsection.

(7) Each eligible high school student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Senator Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District, and shall be recognized by the high school in a manner consistent with recognition given by the high school to other high levels of academic achievement.

Section 7. KRS 164A.050 is amended to read as follows:

(1) There is hereby created and established an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a body corporate and politic to be known and identified as the Kentucky Higher Education Student Loan Corporation.

(2) The Kentucky Higher Education Student Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential governmental and public functions and purposes in improving and otherwise promoting the educational opportunities of the citizens and inhabitants of the Commonwealth of Kentucky and other qualified students by a program of financing, making, and purchasing of insured student loans.

(3) (a) Subject to paragraph (b) of this subsection, the corporation shall be governed by a board of directors consisting of:

1. Eight (8) voting members chosen from the general public residing in the Commonwealth of Kentucky; and

2. Seven (7) voting members of the board of directors of the Kentucky Higher Education Assistance Authority appointed by the Governor pursuant to KRS 164.746(1)(a)1., who shall serve terms of office on the corporation board of directors coextensive with their respective terms of office on the Kentucky Higher Education Assistance Authority board of directors.

(b) Upon resignation or expiration of the term of an appointed member of the board of the corporation and the Kentucky Higher Education Assistance Authority, that member's position shall be abolished to reduce the combined number of appointed members of the boards of the corporation and the Kentucky Higher Education Assistance Authority to ten (10) members.

(c) In addition, the president of the Council on Postsecondary Education, the secretary of the Finance and Administration Cabinet, the president of the Association of Independent Kentucky Colleges and Universities, the State Treasurer, and the commissioner of education, or their designees who shall be another official of the same cabinet or agency, shall serve as ex officio voting members.

(4) The Governor shall appoint directors according to subsection (3)(a)1. of this section from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005 to take office and to exercise all powers thereof immediately. The terms shall be staggered and shall be for a period of four (4) years each. Each director shall serve for the appointed term and, except as provided in subsection (3)(b) of this section, shall serve until a successor has been appointed and has duly qualified.

(5) Except as provided in subsection (3)(b) of this section, in the event of a vacancy, the Governor may appoint a replacement director from nominees submitted by the Governor's Higher Education Nominating Committee under KRS 164.005 who shall hold office during the remainder of the term so vacated.

(6) The Governor may remove any director from the general public in case of incompetency, neglect of duties, gross immorality, or malfeasance in office; and may thereupon declare such office vacant and may appoint a person to fill such vacancy as provided in other cases of vacancy.

(7) The board shall elect from its voting membership a chair, chair-elect, and secretary-treasurer. The executive director of the Kentucky Higher Education Assistance Authority shall serve as executive director of the corporation.

(8) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary-treasurer of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary-treasurer may copy all minutes and other records and documents of the corporation and give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.

(9) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes notwithstanding the existence of any vacancies in respect of the board of directors.

(10) Official actions may be taken by the corporation at meetings duly called by the chair upon three (3) days' written notice to each director or upon the concurrence of at least a majority of the directors. In lieu of personal attendance by members of the board of directors at the same location, the board of directors may conduct meetings by teleconference or other available technological means suitable for conducting its business. Meetings of the board shall be open and accessible to the public in accordance with KRS 61.805 to 61.850, and any alternate method of conducting a meeting in lieu of personal attendance shall ensure public access.

(11) Directors, except officers or employees of the state, shall receive one hundred dollars ($100) compensation per day for their services and shall be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under this chapter.

(12) ***Recognizing that the corporation and*** the Kentucky Higher Education Assistance Authority ***are governed by identical boards of directors and managed by a common executive director and otherwise share staff functions, the two (2) organizations***~~[, the "guarantee agency",]~~ shall provide technical, clerical, and administrative assistance to ***each other and for the Kentucky Educational Savings Plan Trust and the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund***~~[the corporation]~~, together with necessary office space and personnel, and shall assist ***each other***~~[the corporation]~~ in all ways by the

performance of any and all actions which may be useful or beneficial~~[to the corporation]~~ in the performance of ***their***~~[its]~~ public functions~~[as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky charged with the responsibility of financing, making, and purchasing of insured student loans]~~.

(13) The corporation shall enter into~~[such]~~ contracts with the ***Kentucky Higher Education Assistance Authority, the Kentucky Educational Savings Plan Trust, and the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund***~~[guarantee agency]~~ as ***may***~~[shall]~~ be proper and appropriate in respect ***to***~~[of such]~~ services which may include~~[,]~~ but not ***be limited to the***~~[by way of limitation,]~~ servicing and collection of insured student loans ***or to facilitate the common administration, operation, and management of the contracting entities***.

Section 8. KRS 164A.060 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the following powers:

(1) To make or participate in the making of insured student loans.

(2) To purchase or participate in the purchase of insured student loans, which purchase may be from eligible lenders.

(3) To sell or participate in the sale of insured student loans, which sale may be to eligible lenders or to the student loan marketing association.

(4) To collect and pay reasonable fees and charges in connection with making, purchasing, and servicing or causing to be made, purchased, or serviced insured student loans by the corporation, including payment to the guarantee agency for services performed for the corporation.

(5) To procure insurance in respect of all student loans made or purchased by the corporation.

(6) To consent whenever it deems it necessary or desirable in the fulfillment of its corporate purposes to the modification of the rate of interest, time of payment of any installment of principal or interest or any other terms of any insured student loan to which the corporation is a party; provided, that no such consent shall be made or given if the effect of same would be to obviate insurance coverage in respect of any student loan.

(7) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on its obligations for a period not exceeding two (2) years from their date, consulting, advisory and legal fees, and such other expenses as are necessary or incident to any such borrowing.

(8) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes.

(9) To make, execute, and effectuate any and all agreements or other documents with any federal or state agency or any person, corporation, association, partnership, or other organization or entity ***and perform other acts*** necessary ***or appropriate*** to accomplish ***effectively*** the purposes of this chapter.

(10) To accept appropriations, loans, grants, revenue sharing, devises, gifts, bequests and federal grants, and any other aid from any source whatsoever and to agree to, and to comply with, conditions incident thereto.

(11) To sue and be sued in its own name and to plead and be impleaded.

(12) To maintain an office in the city of Frankfort, Kentucky, in conjunction with or in close proximity to the Kentucky Higher Education Assistance Authority and such other regional offices as may be required.

(13) To adopt an official seal and alter the same at pleasure.

(14) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(15) To employ fiscal consultants, attorneys, counselors, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation.

(16) To invest any funds held in reserves or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the United States or its agencies and instrumentalities; provided, however, that the return on such investments shall not be violative of any laws and regulations regarding investment of the proceeds of any federal tax-exempt bond issue.

(17) To issue its bonds and notes for the purpose of carrying out its corporate powers and duties as set forth in this chapter.

(18) To service and collect educational loans for other lenders, holders, and educational institutions.

(19) Except where specifically prohibited by law, to secure data from any other Commonwealth of Kentucky agency or instrumentality or from any other source in furtherance of any purposes of the corporation related to any program or function administered by the corporation.

Section 9. KRS 164A.350 is amended to read as follows:

For all purposes of Kentucky law, the following shall be applicable:

(1) The trust shall exercise ownership of all contributions made under any participation agreement and all interest derived from the investment of the contributions made by the participant up to the date of utilization for payment of higher education costs for the beneficiary. All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any participant may cancel a participation agreement at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee. In the event the participation agreement is terminated in part, the trust shall retain ownership of all contributions made under the participation agreement not previously expended for the higher education costs of the beneficiary and not returned to the participant. The participant shall retain a reversionary right to receive upon termination the actual market value of the participant's account at the time of the cancellation, including interest, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;

(3) Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth postsecondary education prepaid tuition trust fund established in KRS 164A.701, and in compliance with administrative regulations promulgated by the board for the savings plan trust;

(4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant may be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;

(5) The institution of higher education shall obtain ownership of the distributions made from the participant's account for the higher education costs paid to the institution at the time each payment is made to the institution;

(6) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;

(7) A participant may transfer the participant's rights to another eligible participant, including, but not limited to, a gift of the participant's rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be effected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;

(8) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board ***may***~~[shall]~~ charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

(a) The death, permanent disability, or mental incapacity of the beneficiary; or

(b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and

(9) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a

creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

SECTION 10. A NEW SECTION OF KRS 164A.550 TO 164A.630 IS CREATED TO READ AS FOLLOWS:

If the governing board is unable to pay the required principal and interest payments due on agency bonds issued by the postsecondary institution from system revenues or from other available agency revenues and the governing board fails to transmit to the paying agent bank or trustee the debt service and administrative payments when due as required by the bond issuance resolution, the paying agent bank or trustee shall notify the secretary of the Finance and Administration Cabinet in writing and request that the cabinet withhold or intercept from the governing board a sufficient portion of any appropriated state funds not yet disbursed to the institution to satisfy the required payment on the bonds. If the secretary determines that the institution is in risk of defaulting on the payment of the bonds or has defaulted, the secretary shall notify the governing board and within five (5) days remit payment to the paying agent bank or trustee such funds as are required from the appropriation to the institution. Thereafter, the governing board shall, to the extent it is otherwise legally permitted, take action within sixty (60) days to adopt a resolution to generate additional revenues, such as increasing the minimum rents, tolls, fees, and other charges, in order to positively adjust remittances to the funds accounts. Nothing in this section shall be construed to create any obligation on the part of the Commonwealth to make any payment on behalf of the defaulting institution other than from funds previously appropriated to the governing board of that institution.

Approved April 9, 2004

CHAPTER 112

(SB 142)

AN ACT relating to the Airport Zoning Commission.

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

Section 1. KRS 183.861 is amended to read as follows:

(1) There is hereby created and established within the cabinet, a commission to be known as the "Kentucky Airport Zoning Commission" which, notwithstanding the provisions of KRS Chapters 100 and 147, shall be empowered to issue orders, rules, and regulations pertaining to use of land within and around ***the facilities identified in subsection (2) of this section***~~[all military and public use airports, heliports, and sea plane bases within the state]~~ as will promote the public interest and protect and encourage the proper use of the airports and their facilities.

(2) The commission shall have jurisdiction over land use issues around the following facilities:

(a) All military airports in the Commonwealth;

(b) All public use airports, heliports, and sea plane bases in the Commonwealth; and

(c) All state licensed, private use airports which have a paved runway in excess of two thousand nine hundred (2,900) feet.

Approved April 9, 2004

CHAPTER 113

(SB 189)

AN ACT relating to long-term care facilities.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

(1) A long-term care facility owned, managed, or operated by the Department of Mental Health and Mental Retardation Services shall request an in-state criminal background information check from the Justice Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-

state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth.

(2) No facility specified in subsection (1) of this section shall knowingly employ any person who has been convicted of a felony offense under:

(a) KRS Chapter 209;

(b) KRS Chapter 218A;

(c) KRS 507.020, 507.030, and 507.040;

(d) KRS Chapter 509;

(e) KRS Chapter 510;

(f) KRS Chapter 511;

(g) KRS Chapter 513;

(h) KRS 514.030;

(i) KRS Chapter 530;

(j) KRS Chapter 531;

(k) KRS 508.010, 508.020, 508.030, and 508.032;

(l) A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or

(m) A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States.

(3) A person who has received a pardon for an offense specified in subsection (2) or has had the record of such an offense expunged may be employed.

(4) Department for Mental Health and Mental Retardation facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).

Approved April 9, 2004

CHAPTER 114

(SB 266)

AN ACT relating to the designation of the official fruit of Kentucky.

WHEREAS, blackberries grow in the wild throughout the Commonwealth; and

WHEREAS, many native Kentuckians have fond memories of picking wild blackberries in the woods of Kentucky in their younger days; and

WHEREAS, blackberries have become an increasingly popular bramble crop and are sold at local farmers' markets, grocery stores, produce auctions, and in many restaurants throughout the Commonwealth; and

WHEREAS, Kentucky has many untapped market channels for in-season blackberries; and

WHEREAS, blackberry farmers and growers throughout Kentucky are reporting plans to expand their acreage in an attempt to meet the rising demand of consumers;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The blackberry is named and designated as the official fruit of Kentucky.

Approved April 9, 2004

CHAPTER 115

(SJR 3)

A JOINT RESOLUTION relating to vehicle emissions control testing.

WHEREAS, in various areas of the Commonwealth vehicle emissions testing (VET) programs have operated since 1984; and

WHEREAS, since 1984, the regulation of pollutants has tightened and technological controls on a variety of air emission sources, including vehicles, have improved; and

WHEREAS, gasoline formulations have changed to reduce harmful components; and

WHEREAS, approximately 98% of vehicles tested pass the first time tested for emissions; and

WHEREAS, VET programs are seen by many citizens as an imposition, unnecessary, and ineffective to achieve the program's purpose; and

WHEREAS, federal law allows various approaches to attaining air quality; and

WHEREAS, KRS 224.20-715 provides that "The cabinet shall administer or provide for a comprehensive vehicle emission control program which may require the annual inspection of vehicles in counties designated by federal Environmental Protection Agency regulation to be nonattainment for ozone, carbon monoxide, or nitrogen dioxide if a program is necessary or prudent to meet federal air quality standards and if no federal Environmental Protection Agency approved program is being operated by an air pollution control district, county fiscal court, or combination of county fiscal courts"; and

WHEREAS, the Natural Resources and Environmental Protection Cabinet by administrative regulation 401 KAR 65:010 requires the establishment of VET programs in "Vehicle Emission Control Areas," which are defined in that administrative regulation as counties in which the entire county has been designated "moderate ozone nonattainment"; and

WHEREAS, the Natural Resources and Environmental Protection Cabinet's administrative regulation 401 KAR 65:010 also provides that the VET programs established pursuant to the administrative regulation shall continue upon redesignation of the program areas to "attainment" for ozone; and

WHEREAS, the Natural Resources and Environmental Protection Cabinet's "Northern Kentucky Emissions Check" vehicle emissions testing program is currently operating in counties which are no longer designated "moderate ozone nonattainment"; and

WHEREAS, the Commonwealth's only other VET program operated in an area that is also no longer in nonattainment status and has been eliminated; and

WHEREAS, the Finance and Administration Cabinet has entered into a 10-year price contract, PCT NO.: BP010138, for emissions testing related to the Northern Kentucky Emissions Check program; and

WHEREAS, that contract provides for termination, with 90 days' notice, of the contract by either party at any time due to termination of the vehicle emission control program for any of the subject counties, or due to federal or legislative changes or court decisions, or for other reasons;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Natural Resources and Environmental Protection Cabinet is directed to submit to the United States Environmental Protection Agency a revision of the State Implementation Plan for the 1-hour ozone standard that would remove the vehicle emissions testing program provided for in 401 KAR 65:010 in the area served by the Northern Kentucky Emissions Check testing program not later than August 1, 2004.

Section 2. It should be further stipulated that the Commonwealth of Kentucky will determine the best methods to meet and exceed any Clean Air Act standards now and in the future. Furthermore, the Commonwealth of Kentucky, and any and all cabinets so charged with meeting such standards, will not permit nor allow punitive actions to be

taken against the Commonwealth's citizens, business, or lands so long as the Commonwealth can show its methods to be improving the air quality to achieve or exceed federal standards within a reasonable time frame.

Section 3. Upon approval of the State Implementation Plan revision, the Natural Resources and Environmental Protection Cabinet and the Transportation Cabinet are directed to take any and all measures necessary to ensure that no motor vehicle owner whose vehicle is subject to testing by the Northern Kentucky Emissions Check testing program is refused registration reinstatement, denied vehicle registration, or subjected to registration revocation after cancellation of the program for failure to comply with Northern Kentucky Emissions Check program requirements prior to its cancellation.

Section 4. In the event that the area served by the Northern Kentucky Emissions Check testing program is redesignated as nonattainment under the 8-hour ozone or 2.5 fine particulate standards, the Natural Resources and Environmental Protection Cabinet is directed to formulate a State Implementation Plan for these standards that does not rely upon a vehicle emissions testing program, unless the same is required by law or necessary for the approval of the State Implementation Plan. The final decision in this regard remains with the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 5. The Natural Resources and Environmental Protection Cabinet is directed to provide technical assistance, if requested, to the Louisville Metro Air Pollution Control District to find compensating reductions in emissions by the United States Environmental Protection Agency, so that the State Implementation Plan for these standards does not rely upon a vehicle emissions testing program, unless the same is required by law or necessary for the approval of the State Implementation Plan.

Approved April 9, 2004

CHAPTER 116

(HB 67)

AN ACT relating to hospitalization of a disabled or incapacitated person.

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

Section 1. KRS 222.430 is amended to read as follows:

(1) Involuntary ***treatment ordered for a***~~[hospitalization of the]~~ person ***suffering from***~~[with both]~~ alcohol and other drug abuse~~[disorders as defined in KRS 222.005 and mental health disturbances]~~ shall ***follow the procedures set forth in Sections 1 to 8 of this Act***~~[take place by the same procedures as hospitalization of the mentally ill as provided in KRS Chapters 202A and 210]~~.

(2) ***Except as otherwise provided for in Sections 1 to 8 of this Act,*** all rights guaranteed by KRS Chapters 202A~~[, 202B,]~~ and 210 to ***involuntarily hospitalized*** mentally ill persons shall be guaranteed to ***a***~~[the]~~ person ***ordered to undergo treatment for***~~[with]~~ alcohol and other drug abuse~~[disorder]~~.

SECTION 2. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

No person suffering from alcohol and other drug abuse shall be ordered to undergo treatment unless that person:

(1) Suffers from alcohol and other drug abuse;

(2) Presents an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse, or there exists a substantial likelihood of such a threat in the near future; and

(3) Can reasonably benefit from treatment.

SECTION 3. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

(1) Proceedings for sixty (60) days or three hundred sixty (360) days of treatment for an individual suffering from alcohol and other drug abuse shall be initiated by the filing of a verified petition in District Court.

(2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."

(3) The petition shall be filed by a spouse, relative, friend, or guardian of the individual concerning whom the petition is filed.

(4) The petition shall set forth:

(a) Petitioner's relationship to the respondent;

(b) Respondent's name, residence, and current location, if known;

(c) The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;

(d) The name and residence of respondent's husband or wife, if any and if known;

(e) The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that the person is unknown; and

(f) Petitioner's belief, including the factual basis therefor, that the respondent is suffering from an alcohol and other drug abuse disorder and presents a danger or threat of danger to self, family, or others if not treated for alcohol or other drug abuse.

Any petition filed pursuant to this subsection shall be accompanied by a guarantee, signed by the petitioner or other person authorized under subsection (3) of this section, obligating that person to pay all costs for treatment of the respondent for alcohol and other drug abuse that is ordered by the court.

SECTION 4. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

(1) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition.

(2) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be ordered to undergo treatment, then the court shall:

(a) Set a date for a hearing within fourteen (14) days to determine if there is probable cause to believe the respondent should be ordered to undergo treatment for alcohol and other drug abuse;

(b) Notify the respondent, the legal guardian, if any and if known, and the spouse, parents, or nearest relative or friend of the respondent concerning the allegations and contents of the petition and the date and purpose of the hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and

(c) Cause the respondent to be examined no later than twenty-four (24) hours before the hearing date by two (2) qualified health professionals, at least one (1) of whom is a physician. The qualified health professionals shall certify their findings to the court within twenty-four (24) hours of the examinations.

(3) If, upon completion of the hearing, the court finds the respondent should be ordered to undergo treatment, then the court shall order such treatment for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition or otherwise agreed to at the hearing. Failure of a respondent to undergo treatment ordered pursuant to this subsection may place the respondent in contempt of court.

(4) If, at any time after the petition is filed, the court finds that there is no probable cause to continue treatment or if the petitioner withdraws the petition, then the proceedings against the respondent shall be dismissed.

SECTION 5. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

(1) Following an examination by a qualified health professional and a certification by that professional that the person meets the criteria specified in Section 2 of this Act, the court may order the person hospitalized for a period not to exceed seventy-two (72) hours if the court finds, by clear and convincing evidence, that the respondent presents an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse.

(2) Any person who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours of admittance.

(3) No respondent ordered hospitalized under this section shall be held in jail pending transportation to the hospital or evaluation unless the court has previously found the respondent to be in contempt of court for

either failure to undergo treatment or failure to appear at the evaluation ordered pursuant to Section 4 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

When the court is authorized to issue an order that the respondent be transported to a hospital the court may, or if the respondent fails to attend an examination scheduled before the hearing provided for in Section 4 of this Act then the court shall, issue a summons. A summons so issued shall be directed to the respondent and shall command the respondent to appear at a time and place therein specified. If a respondent who has been summoned fails to appear at the hospital or the examination, then the court may order the sheriff or other peace officer to transport the respondent to a hospital or psychiatric facility designated by the cabinet for treatment under Section 9 of this Act. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the respondent to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be included in the costs of treatment for alcohol and other drug abuse to be paid by the petitioner.

SECTION 7. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

The definitions in KRS 202A.011 and the procedures in KRS Chapter 202A apply to Sections 1 to 8 of this Act except where terms or procedures used therein are defined in Section 11 of this Act or are otherwise provided for in Sections 1 to 8 of this Act, respectively.

SECTION 8. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 8 of this Act may be cited as the Matthew Casey Wethington Act for Substance Abuse Intervention.

SECTION 9. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

Regional community mental health-mental retardation boards shall, on at least an annual basis, submit the following lists to the circuit clerks in each board's region:

(1) A list of hospitals and psychiatric facilities in the judicial districts within the board's region which are able and willing to take respondents ordered to undergo seventy-two (72) hours of treatment and observation pursuant to Section 5 of this Act; and

(2) A list of hospitals and treatment providers in the judicial districts within the board's region who are able and willing to provide treatment for alcohol and other drug abuse ordered pursuant to Section 4 of this Act.

Section 10. KRS 222.475 is amended to read as follows:

The cabinet~~[for Health Services]~~ shall annually submit to the Governor ***and the General Assembly*** a treatment-center evaluation report. The report shall include, but not be limited to, the following information:

(1) An inventory of all licensed chemical dependency treatment services in Kentucky;

(2) The information submitted by each treatment center or program pursuant to KRS 222.460 and 222.465; and

(3) The employment, educational, and criminal history of clients in each program that received state or federal funds.

Section 11. KRS 222.005 is amended to read as follows:

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

(1) "Administrator" means the person or the designee of the person, in charge of the operation of an alcohol and other drug abuse prevention, intervention, or treatment program;

(2) "Agency" means a legal entity operating hospital-based or nonhospital-based alcohol and other drug abuse prevention, intervention, or treatment programs;

(3) ***"Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or both, characterized by one (1) or more of the following patterns of use:***

(a) The continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol or other drugs or both;

(b) Use in situations which are potentially physically hazardous;

(c) Loss of control over the use of alcohol or other drugs or both; and

(d) Use of alcohol or other drugs or both is accompanied by symptoms of physiological dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol or other drugs or both;

(4) "Cabinet" means the Cabinet for Health Services;

(5) ~~[(4)]~~ "Director" means the director of the Division of Substance Abuse of the Department for Mental Health and Mental Retardation Services;

(6) ~~[(5)]~~ "Hospital" means an establishment with organized medical staff and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical;

(7) ~~[(6)]~~ "Intoxication" means being under the influence of alcohol or other drugs, or both, which significantly impairs a person's ability to function;

(8) ~~[(7)]~~ "Juvenile" means any person who is under the age of eighteen (18);

(9) ~~[(8)]~~ ***"Narcotic treatment program" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic drug of that group;***

(10) "Other drugs" means controlled substances as defined in KRS Chapter 218A and volatile substances as defined in KRS 217.900;

(11) ~~[(9)]~~ "Patient" means any person admitted to a hospital or a licensed alcohol and other drug abuse treatment program;

(12) ~~[(10)]~~ "Program" means a set of services rendered directly to the public that is organized around a common goal of either preventing, intervening, or treating alcohol and other drug abuse problems;

(13) ~~[(11)]~~ "Secretary" means the secretary of the Cabinet for Health Services;

~~[(12) "Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or both, characterized by one (1) or more of the following patterns of use:~~

~~(a) The continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol or other drugs or both;~~

~~(b) Use in situations which are potentially physically hazardous;~~

~~(c) Loss of control over the use of alcohol or other drugs or both; and~~

~~(d) Use of alcohol or other drugs or both is accompanied by symptoms of physiological dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol or other drugs or both;]~~

(14) ~~[(13)]~~ "Treatment" means services and programs for the care and rehabilitation of intoxicated persons and ***persons suffering from*** alcohol and other drug ***abuse. "Treatment" includes those services provided by the cabinet in KRS 222.211 and, in Sections 1 to 8 of this Act, it specifically includes the services described in KRS 222.211(1)(c) and (d)*** ~~[abusers]~~; and

(15) "Qualified health professional" has the same meaning as qualified mental health professional in KRS 202A.011, except that it also includes an alcohol and drug counselor certified under KRS Chapter 309 ~~[(14) "Narcotic treatment program" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic drug of that group]~~.

Section 12. KRS 222.231 is amended to read as follows:

(1) The cabinet shall issue for a term of one (1) year, and may renew for like terms, a license, subject to revocation by it for cause, to any persons, other than an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a

department, agency, or institution of the federal government, deemed by it to be responsible and suitable to establish and maintain a program and to meet applicable licensure standards and requirements.

(2) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing requirements and standards for licensing agencies and approving programs. The requirements and standards shall include~~[, but be limited to]~~:

(a) The health and safety standards to be met by a facility housing a program;

(b) Patient care standards and minimum operating, training, and maintenance of patient records standards;

(c) Licensing fees, application, renewal and revocation procedures, and the procedures for evaluation of the alcohol and other drug abuse programs; and

(d) Classification of alcohol and other drug abuse programs according to type, range of services, and level of care provided.

(3) The cabinet may establish different requirements and standards for different kinds of programs, and may impose stricter requirements and standards in contracts with agencies made pursuant to KRS 222.221.

(4) Each agency shall be individually licensed or approved.

(5) Each agency shall file with the cabinet from time to time, the data, statistics, schedules, or information the cabinet may reasonably require for the purposes of this section.

(6) The cabinet shall have authority to deny, revoke, modify, or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated thereunder. The denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the action. The denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within this thirty (30) day period, shall file a request in writing for a hearing before the cabinet.

(7) The cabinet, after holding a hearing conducted by a hearing officer appointed by the secretary and conducted in accordance with KRS Chapter 13B, may refuse to grant, suspend, revoke, limit, or restrict the applicability of or refuse to renew any agency license or approval of programs for any failure to meet the requirements of its administrative regulations or standards concerning a licensed agency and its program. A petition for judicial review shall be made to the Franklin Circuit Court in accordance with KRS Chapter 13B.

(8) No person, excepting an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a department, agency, or institution of the federal government, shall operate a program without a license pursuant to this section.

(9) Each program operated by a licensed agency shall be subject to visitation and inspection by the cabinet and the cabinet shall inspect each agency prior to granting or renewing a license. The cabinet may examine the books and accounts of any program if it deems the examination necessary for the purposes of this section.

(10) The director may require agencies which contract with the Commonwealth pursuant to KRS 222.221 to admit as an inpatient or outpatient any person to be afforded treatment pursuant to this chapter, subject to service and bed availability and medical necessity.

(11) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A governing the extent to which programs may be required to treat any person on an inpatient or outpatient basis pursuant to this chapter, except that no licensed hospital with an emergency service shall refuse any person suffering from acute alcohol or other drug intoxication or severe withdrawal syndrome from emergency medical care.

(12) All narcotic treatment programs shall be licensed under this section prior to operation. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish additional standards of operation for narcotic treatment programs. The administrative regulations shall include minimum requirements in the following areas:

(a) Compliance with relevant local ordinances and zoning requirements;

(b) Submission of a plan of operation, including memoranda of agreement which reflect supportive services from local hospitals, law enforcement agencies, correctional facilities, community mental health and mental retardation agencies, and other alcohol and drug abuse services in the community;

(c) Criminal records checks for employees of the narcotic treatment program. Narcotic treatment programs shall not employ any person convicted of a crime involving a controlled substance as defined in KRS Chapter 218A;

(d) Conditions under which clients are permitted to take home doses of medications;

(e) Urine screening requirements;

(f) Quality assurance procedures;

(g) Program sponsor requirements;

(h) Qualifications for the medical director for a narcotic treatment program, who at a minimum shall:

1. Be a licensed physician pursuant to KRS Chapter 311 and function autonomously within the narcotic treatment program; and

2. Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years' documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

3. Be a physician licensed pursuant to KRS Chapter 311 and certified as an addictionologist by the American Society of Addiction Medicine.

(i) Security and control of narcotics and medications;

(j) Program admissions standards;

(k) Treatment protocols;

(l) Treatment compliance requirements for program clients;

(m) Rights of clients; and

(n) Monitoring of narcotic treatment programs by the cabinet.

Section 13. KRS 222.311 is amended to read as follows:

(1) No hospital shall deny treatment to a person solely because of his alcohol ***and***~~[or]~~ other drug abuse.

(2) Any intoxicated person admitted to a licensed alcohol ***and***~~[or]~~ other drug abuse program or a hospital licensed to provide chemical dependency treatment or detoxification services, shall receive treatment at the program or hospital for as long as the person wishes to remain, or until benefits expire, or the administrator determines that treatment will no longer benefit the person.

Section 14. KRS 222.421 is amended to read as follows:

(1) Any person may request treatment from a physician or alcohol and other drug abuse program licensed or approved by the cabinet~~[for Health Services]~~ to provide alcohol and other drug abuse treatment services. Persons infected with HIV, hepatitis B, or hepatitis C shall have priority access to any licensed treatment services.

(2) Every alcohol and other drug abuse program that provides intervention or treatment services to a person with an alcohol and other drug abuse problem or prevention programming to any persons in the community shall, upon request of the cabinet~~[for Health Services]~~, make a statistical report to the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention, intervention, and treatment services during a specified period of time. The name or address of any person to whom prevention, intervention, or treatment services were provided shall not be reported. The secretary~~[of the Cabinet for Health Services]~~ shall provide compilations of the statistical information to other appropriate agencies upon request.

Section 15. KRS 222.460 is amended to read as follows:

(1) As a requirement to receive state or federal funds, including Medicaid, a treatment center or program licensed as a chemical dependency treatment service pursuant to KRS 216B.105 or this chapter shall participate in an evaluation or client-outcome effectiveness study conducted by the cabinet~~[for Health Services]~~.

(2) Information for the evaluation shall include, but is not limited to, the following:

(a) The total number of alcohol and drug abuse clients admitted to treatment;

(b) The total number of referrals from the District and Circuit Courts and the Department of Corrections;

(c) The client's change in alcohol and other drug use patterns from admission to discharge from treatment;

(d) The client's change in employment status from admission to discharge from treatment; and

(e) The client's change in involvement with the criminal justice system from admission to discharge from treatment.

(3) All information collected pursuant to this chapter shall be held confidential with respect to the identity of individual clients. Access to information that identifies individual clients may be provided to qualified persons or organizations with a valid scientific interest, as determined by the secretary~~[of health services]~~, who are engaged in research related to patterns of drug and alcohol use, the effectiveness of treatment, or similar studies and who agree in writing to maintain confidentiality.

Section 16. KRS 600.020 is amended to read as follows:

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

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005~~[(12)]~~;

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child; or

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or

(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;

(2) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:

(a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;

(b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;

(c) The parent has sexually abused the child and has refused available treatment;

(d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or

(e) The parent has caused the child serious physical injury;

(3) "Beyond the control of ***parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645***~~[school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school]~~;

(4) "Beyond the control of ***school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school***~~[parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645]~~;

(5) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(6) "Cabinet" means the Cabinet for Families and Children;

(7) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(8) "Child" means any person who has not reached his eighteenth birthday, unless otherwise provided;

(9) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(10) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(11) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(12) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

(13) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(14) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(15) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(16) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(17) "Deadly weapon" has the same meaning as it does in KRS 500.080;

(18) "Department" means the Department for Community Based Services;

(19) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(20) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection;

(21) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

(22) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(23) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(24) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(25) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(26) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(27) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(28) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 three (3) or more times during a one (1) year period;

(29) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(30) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(31) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(32) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(33) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and in which children are supervised and observed on a regular basis by certified juvenile facility staff;

(34) "Juvenile holding facility" means a physically secure facility, approved by the Department of Juvenile Justice, which is an entirely separate portion or wing of a building containing an adult jail, which provides total sight and sound separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile facility staff to provide twenty-four (24) hours per day supervision;

(35) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence;

(36) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(37) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(38) "Needs of the child" means necessary food, clothing, health, shelter, and education;

(39) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(40) "Nonsecure setting" means a nonsecure facility or a residential home, including a child’s own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(41) "Parent" means the biological or adoptive mother or father of a child;

(42) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(43) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(44) "Physical injury" means substantial physical pain or any impairment of physical condition;

(45) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(46) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(47) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or

(g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;

(48) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(49) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(50) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(51) "Secretary" means the secretary of the Cabinet for Families and Children;

(52) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;

(53)~~["Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;~~

~~(54)]~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(54)~~[(55)]~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(55)~~[(56)]~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(56)~~[(57)]~~ "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(57) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(58) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(59) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(60) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

(a) Who was brought before the court and made subject to the order;

(b) Whose future conduct was regulated by the order;

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and

(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

(61) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(62) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and

(63) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 17. KRS 610.127 is amended to read as follows:

Reasonable efforts as defined in KRS 620.020 shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has:

(1) Subjected the child to aggravated circumstances as defined in KRS 600.020;

(2) Been convicted in a criminal proceeding of having caused or contributed to the death of another child of the parent;

(3) Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(4) Had their parental rights to another child terminated involuntarily;

(5) Engaged in a pattern of conduct due to alcohol or other drug abuse as defined in KRS 222.005~~[(12)]~~ for a period of not less than ninety (90) days that has rendered the parent incapable of caring for the immediate and ongoing needs of the child, and the parent has refused or failed to complete available treatment for alcohol or other drug abuse;

(6) Mental illness as defined in KRS 202A.011~~[(9)]~~ or mental retardation as defined in KRS 202B.010~~[(9)]~~ or other developmental disability as defined in KRS 387.510~~[(7)]~~ that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months; or

(7) Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child.

Section 18. KRS 620.023 is amended to read as follows:

(1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:

(a) Mental illness as defined in KRS 202A.011~~[(9)]~~ or mental retardation as defined in KRS 202B.010~~[(9)]~~ of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;

(b) Acts of abuse or neglect as defined in KRS 600.020~~[(1)]~~ toward any child;

(c) Alcohol and other drug abuse, as defined in KRS 222.005~~[(12)]~~, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;

(d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;

(e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and

(f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.

(2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

Section 19. KRS 311.631 is amended to read as follows:

(1) If an adult patient ***whose physician has determined that he or she***~~[, who]~~ does not have decisional capacity~~[,]~~ has not executed an advance directive**,** or to the extent the advance directive does not address a decision that must be made, any one (1) of the following responsible parties, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act, shall be authorized to make health care decisions on behalf of the patient:

(a) The judicially-appointed guardian of the patient, if the guardian has been appointed and if medical decisions are within the scope of the guardianship;

(b) ***The attorney-in-fact named in a durable power of attorney, if the durable power of attorney specifically includes authority for health care decisions;***

(c) The spouse of the patient;

(d)~~[(c)]~~ An adult child of the patient, or if the patient has more than one (1) child, the majority of the adult children who are reasonably available for consultation;

(e)~~[(d)]~~ The parents of the patient;

(f)~~[(e)]~~ The nearest living relative of the patient, or if more than one (1) relative of the same relation is reasonably available for consultation, a majority of the nearest living relatives.

(2) In any case in which a health care decision is made under this section, the decision shall be noted in writing in the patient's medical records.

(3) An individual authorized to consent for another under this section shall act in good faith, in accordance with any advance directive executed by the individual who lacks decisional capacity, and in the best interest of the individual who does not have decisional capacity.

(4) ***In any case in which a health care decision is made under this section, hospitalization for psychiatric treatment at a general hospital shall not exceed fourteen (14) consecutive days unless a court order is obtained under KRS Chapter 202A or 202B. For the purposes of this section, a general hospital is one that is not owned or operated by the Commonwealth of Kentucky.***

(5) An individual authorized to make a health care decision under this section may authorize the withdrawal or withholding of artificially-provided nutrition and hydration only in the circumstances as set forth in KRS 311.629(3).

Section 20. The following KRS section is repealed:

222.021 Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group -- Membership -- Duties -- Expiration of section.

Became law April 10, 2004, without Governor's signature

CHAPTER 117

(HB 152)

AN ACT relating to the Education Professional Standards Board.

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

Section 1. KRS 160.350 is amended to read as follows:

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following ***the individual's***~~[his]~~ appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign ***during a***~~[his]~~ term and accept a new term from the same board of education prior to the expiration date of ***the***~~[his]~~ present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

(2) ***An individual shall not assume the duties of superintendent in a district until he or she provides the board of education with a copy of a certificate for school superintendent issued by the Education Professional Standards Board or its legal predecessor. A superintendent***~~[Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he]~~ shall hold ***a valid***~~[such]~~ certificate throughout the period of~~[his]~~ employment. A superintendent candidate who is to begin ***the***~~[his]~~ duties ***of superintendent*** after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming ***the***~~[his]~~ duties ***of***~~[as]~~ superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association ***that***~~[which]~~ has ***the***~~[his]~~ school ***district's***~~[district]~~ funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.

(3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the ***commissioner of education***~~[chief state school officer]~~. However, if the dismissal of the superintendent has been recommended by a highly skilled certified educator pursuant to KRS 158.6455 and the action is approved by the ***commissioner of education***~~[chief state school officer]~~, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the ***commissioner of education***~~[chief state school officer]~~ for removing the superintendent. The ***commissioner of education***~~[chief state school officer]~~ shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during ***the superintendent's***~~[his]~~ appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, ***the commissioner of education***~~[he]~~ shall either approve or reject the board's request.

(4) After the completion of a superintendent's first contract or after four (4) years, whichever comes last, the board of education may, no later than June 30, extend the contract of the superintendent for one (1) additional year beyond the current term of employment.

Section 2. KRS 161.028 is amended to read as follows:

(1) The Education Professional Standards Board is recognized to be a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions. The Education Professional Standards Board has the authority and responsibility to:

(a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

(b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. Program standards shall reflect national standards and shall address, at a minimum, the following:

1. The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;

2. Research-based classroom practices, including effective classroom management techniques;

3. Emphasis on subject matter competency of teacher education students;

4. Methodologies to meet diverse educational needs of all students;

5. The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;

6. The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;

7. The diversity of faculty;

8. The effectiveness of partnerships with local school districts; and

9. The performance of graduates on various measures as determined by the board.

(c) Conduct an annual review of diversity in teacher preparation programs;

(d) Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;

(e) Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;

(f) Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate;

(g) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;

(h) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;

(i) Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and ***periodically*** report ***data*** ~~[the recommendations]~~ to the Interim Joint Committee on Education;

(j) Submit reports to the Governor and the Legislative Research Commission and inform the public on the status of teaching in Kentucky;

(k) Devise a credentialing system that provides alternative routes to gaining certification and greater flexibility in staffing local schools while maintaining standards for teacher competence;

(l) Develop a professional code of ethics;

(m) Set the qualifications and salary for the positions of executive director and deputy executive director to the board, notwithstanding the provisions of KRS 64.640;

(n) Recruit, select, employ and evaluate the executive director to the board;

(o) Approve employment procedures for the employment of policy level staff, subject to the provisions of KRS 12.050;

(p) Approve the biennial budget request;

(q) Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120;

(r) Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing, by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;

(s) Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;

(t)~~[Grant approval, if appropriate, of a university's request for an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Teacher Internship Program, notwithstanding provisions of KRS 161.030. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program, the internship requirements, and all assessments required by the board;~~

~~(u)]~~ Grant approval, if appropriate, of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board;

(u)~~[(v)]~~ Employ consultants as needed;

(v)~~[(w)]~~ Enter into contracts. Disbursements to professional educators who receive less than one thousand dollars ($1,000) in compensation per fiscal year from the board for serving on an assessment validation panel or as a test scorer or proctor shall not be subject to KRS 45A.690 to 45A.725;

(w)~~[(x)]~~ Sponsor studies, conduct research, conduct conferences, and publish information as appropriate; and

(x)~~[(y)]~~ Issue orders as necessary in any administrative action before the board.

(2) (a) The board shall be composed of seventeen (17) members. The ***commissioner of education***~~[chief state school officer]~~ and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:

1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;

2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;

3. One (1) member representative of local boards of education; and

4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.

(b) The members appointed by the Governor after June 21, 2001, shall be confirmed by the Senate and the House of Representatives under KRS 11.160. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the General Assembly at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.

(c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from ***the member's place of*** ~~[his]~~ employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f) A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive director shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman.

(g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

Section 3. KRS 161.048 is amended to read as follows:

(1) The General Assembly hereby finds that:

(a) 1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;

2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;

3. ***There are persons who should be recruited to teach in Kentucky's public schools as they have academic majors, strong verbal skills as shown by a verbal ability test, and deep knowledge of content, characteristics that empirical research identifies as important attributes of quality teachers;***

4. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and

5. ~~[4.]~~ There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.

(b) There are hereby established alternative certification program options as described in subsections (2) through ***(8)*** ~~[(6)]~~ of this section.

(c) It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.

(d) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section.

(2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience and has been offered employment ~~[at the secondary level]~~ in a local school district shall receive a

one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:

(a) The application contains documentation of all education and work experience;

(b) The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;

(c) The candidate possesses***:***

1. ***a.*** ***A minimum of*** a bachelor's degree, with a ***cumulative*** grade point average of two and five-tenths (2.5) on a four (4) point scale ***or a grade point average of three (3.0) on a four (4) point scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework*** from a nationally or regionally accredited postsecondary institution; ***or***

b. ***A graduate degree with a cumulative grade point average of two and five-tenths (2.5) on a four (4) point scale or a grade point average of three (3.0) on a four (4) point scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution;*** and

2. ***An academic major or a passing score on the academic content assessment designated by the Education Professional Standards Board; and***

(d) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular ***professional***~~[provisional]~~ certificate~~[.~~

~~An individual employed under this alternative shall be certified for one (1) year only, and may be approved for subsequent one (1) year renewals upon request of the local board of education and approval of the Education Professional Standards Board. A teacher who successfully completes three (3) contract years under the provisions of this section shall be awarded a regular provisional certificate,]~~ and ***shall be*** subject to certificate renewal requirements the same as any other teacher with a regular ***professional***~~[provisional]~~ certificate.

(3) Option 2: Certification through a local district training program. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:

(a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.

(b) Pass written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the ***academic content area***~~[subject field]~~ or five (5) years of experience in the ***academic content area***~~[subject field]~~ as approved by the Education Professional Standards Board.

(c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.

(d) Upon meeting the participation requirements as established in this subsection, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.

(e) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.

(4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive alternative certification for teaching at ***any*** ~~[the secondary]~~ level:

(a) A master's degree or doctoral degree in the academic ***content*** ~~[subject]~~ area for which certification is sought;

(b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic ***content*** ~~[subject]~~ area for which certification is sought in a regionally or nationally accredited institution of higher education; and

(c) Successful completion of the teacher internship requirement imposed under KRS 161.030.

(5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046. ***An individual certified as an adjunct instructor shall not be deemed "highly qualified" under the provisions of the federal No Child Left Behind Act of 2001, 20 U.S.C. sec. 6301 et seq.***

(6) Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, to a veteran for teaching at the elementary, secondary, and secondary vocational education levels with the following qualifications:

(a) Discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release;

(b) At least a bachelor's degree in the ***content*** ~~[subject matter]~~ area or closely related area for which certification is sought, issued by a regionally or nationally accredited institution of higher education;

(c) A grade point average of two and five-tenths (2.5) on a four (4) point scale for a bachelor's degree or an advanced degree; and

(d) A passing score on the written exit assessment examination designated by the Education Professional Standards Board for content knowledge.

Upon an offer of employment by a school district, the eligible veteran shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the veteran and the employing school district. During this year, the veteran shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. Upon successful completion of the internship program, the veteran shall receive a regular professional certificate.

(7) ***Option 6: University alternative program. With approval of the Education Professional Standards Board, a university may provide an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky teacher internship program, notwithstanding provisions of KRS 161.030. The temporary provisional certificate shall be valid for a maximum of one (1) year, and may be renewed two (2) additional years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program, the internship requirements, and all assessments required by the board.***

(8) Option 7: Certification of a person in a field other than education to teach in elementary, middle, or secondary programs. This option shall not be limited to teaching in shortage areas.

(a) An individual certified under provisions of this subsection shall be issued a one (1) year temporary provisional teaching certificate, renewable for a maximum of two (2) additional years with approval of the Education Professional Standards Board provided that the candidate:

1. Possesses a bachelor's degree with a declared academic major in the area in which certification is sought and a cumulative grade point average of 3.0 on a 4.0 scale, or a professional or graduate degree in a field related to the area in which certification is sought;

2. Has a minimum score of five hundred (500) on the verbal section and a minimum score of four (4) on the analytical writing section of the Graduate Record Examination (GRE). In addition, teachers of mathematics and physical and biological sciences shall have a minimum score of four hundred fifty (450) on the quantitative section of the GRE. A candidate who has a professional degree shall be exempt from the requirements of this subparagraph; and

3. Passes written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the board.

(b) Prior to receiving the temporary provisional certificate or during the first year of the certificate, the teacher shall complete the following:

1. For elementary teaching, the individual shall successfully complete the equivalent of a two hundred forty (240) hour institute, based on six (6) hour days for eight (8) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board. The content shall include research-based teaching strategies in reading and math, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.

2. For middle and secondary teaching, the individual shall successfully complete the equivalent of a one hundred eighty (180) hour institute, based on six (6) hour days for six (6) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board and shall include research-based teaching strategies, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.

(c) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship program, the candidate shall receive a regular professional certificate.

(9) A teacher certified under subsections (2) to ***(8)***~~[(6)]~~ of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.

(10)~~[(8)]~~ Veterans who were discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release, and who have at least four (4) years of occupational experience in the area in which they seek certification as a vocational industrial education teacher, shall apply for certification under and meet the requirements of the administrative regulations promulgated by the Education Professional Standards Board.

(11)~~[(9)]~~ Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:

(a) An out-of-state license to teach exceptional students;

(b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and

(c) Successful completion of the teacher internship requirement required under KRS 161.030.

Section 4. KRS 161.1221 is amended to read as follows:

(1) ~~[By January 15, 2001,]~~The Education Professional Standards Board shall define "out-of-field" teaching and inform all local school districts of the definition.~~[The board shall review its policies relating to emergency certificates as it develops a definition and consider if these policies contribute to the problem of out-of-field teaching.]~~

(2) By October 15 ***of each year***~~[, 2001]~~, the Education Professional Standards Board shall identify every teacher assigned classes out-of-field in the ***current***~~[2001-2002]~~ school year and shall inform the Kentucky Department of Education.

(3) The Kentucky Department of Education shall provide to each school district a summary of the teachers identified as teaching out-of-field and give the district opportunity to correct the situation during the year. No teacher shall be reduced in salary due to being involuntarily moved out-of-field or being hired into a position out of his or her field. Emergency certification shall not be a valid reason for reducing any certified teacher's salary.

Approved April 9, 2004

CHAPTER 118

(HB 162)

AN ACT relating to debts owed to the Commonwealth.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Debt" means a sum certain which has been certified by an agency as due and owing;

(b) "Liquidated debt" means a legal debt for a sum certain which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted; and for the Court of Justice means a legal debt including any fine, fee, court costs or restitution due the Commonwealth, which have been imposed by a final sentence of a trial court of the Commonwealth and for which the time permitted for payment pursuant to the provisions of KRS 23A.205(3) or KRS 24A.175(4) has expired;

(c) "Agency" means an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010;

(d) "Cabinet" means the Revenue Cabinet;

(e) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;

(f) "Forgivable loan agreement" means a loan agreement entered into between an agency and a borrower that establishes specific conditions, which, if satisfied by the borrower, allows the agency to forgive a portion or all of the loan; and

(g) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse.

(2) Each agency and the Court of Justice shall develop, maintain, and update in a timely manner an ongoing inventory of each debt owed to it, including debts due to improper payments, and shall make every reasonable effort to collect each debt. Within sixty (60) days after the identification of a debt, each agency shall begin administrative action to collect the debt.

(3) The Auditor of Public Accounts shall review each agency's debt identification and collection procedures as part of the annual audit of state agencies.

(4) An agency shall not forgive any debt owed to it unless that agency has entered into a forgivable loan agreement with a borrower, or unless otherwise provided by statute.

(5) For those agencies without statutory procedures for collecting debts, the Revenue Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to prescribe standards and procedures with which those agencies shall comply regarding collection of debts, notices to persons owing debt, information to be monitored concerning the debts, and an appeals process.

(6) Each agency and the Court of Justice shall identify all liquidated debts, including debts due to improper payments, and shall submit a list of those liquidated debts in the form and manner prescribed by the cabinet to the cabinet for review. The cabinet shall review the information submitted by the agencies and the Court of Justice and shall, within ninety (90) days of receipt of the information, determine whether it would be cost-effective for the cabinet to further pursue collection of the liquidated debts.

(a) The cabinet may, after consultation with the agency or the Court of Justice, return the liquidated debt to the entity submitting the liquidated debt if:

1. The request for review contains insufficient information; or

2. The debt is not feasible to collect.

Any return of a liquidated debt shall be in writing, and shall state why the debt is being returned.

(b) The cabinet shall identify in writing, to the submitting agency or the Court of Justice, the liquidated debts it has determined that it can pursue in a cost-effective manner, and the agency or Court of Justice shall officially refer the identified liquidated debts to the cabinet for collection.

(c) The agency and the Court of Justice shall retain a complete record of all liquidated debts referred to the cabinet for collection until the debt is collected or forgiven.

(d) Each agency and the Court of Justice shall make appropriate accounting of any uncollected debt as prescribed by law.

(7) (a) If the agency recovers the debt funds prior to referral to the Revenue Cabinet, the agency shall retain the collected funds in accordance with its statutory authority.

(b) Upon referral of a liquidated debt to the Revenue Cabinet, the liquidated debt shall accrue interest from the time of referral until paid, and a twenty-five percent (25%) collection fee shall attach unless the interest and collection fee are waived by the Revenue Cabinet. The collection fee and interest shall be in addition to any other costs accrued prior to the time of referral. The cabinet may deduct and retain from the liquidated debt recovered an amount equal to the lesser of the collection fee or the actual expenses incurred in the collection of the debt. Any funds recovered by the Revenue Cabinet after the deduction of the cabinet's cost of collection expenses shall be deposited in the general fund, except for Medicaid benefits funds and funds required by law to be remitted to a federal agency, which shall be remitted as required by law.

(c) Nothing in this section shall prohibit the Revenue Cabinet from entering into a memorandum of agreement with an agency pursuant to subsection (11) of Section 5 of this Act, for collection of debts prior to liquidation. If an agency enters into an agreement with the cabinet, the agency shall retain funds collected according to the provisions of the agreement.

(d) This section shall not affect any agreement between the cabinet and an agency entered into under subsection (11) of Section 5 of this Act that is in effect on the effective date of this Act that provides for the collection of liquidated debts by the cabinet on behalf of the agency.

(e) This section shall not affect the collection of delinquent taxes by county attorneys under KRS 134.500.

(f) This section shall not affect the collection of performance or reclamation bonds.

(8) Upon receipt of a referred liquidated debt and after its determination that the debt is feasible and cost-effective to collect, the Revenue Cabinet shall pursue collection of the referred debt in accordance with Section 3 of this Act.

(9) By administrative regulation promulgated under KRS Chapter 13A, the Revenue Cabinet shall prescribe the electronic format and form of, and the information required in, a referral.

(10) (a) The Revenue Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the collection of debts, including debts due to improper payments. The report shall include the total amount by agency and fund type of liquidated debt that has been referred to the cabinet; the amount of each referring agency's liquidated debt, by fund type, that has been collected by the cabinet; and the total amount of each referring agency's liquidated debt, by fund type, that the cabinet determined to be cost-ineffective to collect, including the reasons for the determinations.

(b) Each cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on:

1. The amount of previous fiscal year unliquidated debt by agency, including debts due to improper payments, fund type, category, and age, the latter to be categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years; and

2. The amount, by agency, of liquidated debt, including debts due to improper payments, not referred to the Revenue Cabinet; a summary, by criteria listed in paragraph (a) of subsection (6) of Section 1 of this Act, of reasons the Revenue Cabinet provided for not requesting referral of those liquidated debts; and a summary of the actions each agency is taking to collect those liquidated debts.

(c) Beginning on October 1, 2005, the Court of Justice shall report annually by October 1 of each year to the Interim Joint Committee on Appropriations and Revenue the amount of previous fiscal year unliquidated debt by county and whether in the Circuit Court or District Court; and fund type and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years. The first year for which the Court of Justice shall be required to report is the fiscal year beginning on July 1, 2004 and ending on June 30, 2005. The Court of Justice shall not be required to report unliquidated debts in existence prior to July 1, 2004.

(d) The Finance and Administration Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the amount of the General Government Cabinet's unliquidated debt by agency, fund type, and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years.

(11) At the time of submission of a liquidated debt to the Revenue Cabinet for review, the referring agency or the Court of Justice shall provide information about the debt to the State Treasurer for the Treasurer's action under subsection (1) of Section 2 of this Act.

Section 2. KRS 44.030 is amended to read as follows:

(1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when he or his assignor is indebted to the state. The claim, to the extent it is allowed, shall be credited to the account of the person so indebted, and if there is any balance due him after settling the whole demand of the state ***that***~~[such]~~ balance shall be paid to him.

(2) The Finance and Administration Cabinet shall provide the Cabinet for Families and Children with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Families and Children shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.

(3) Each organizational unit and administrative body in the executive branch of state government, as defined in KRS 12.010, and the Court of Justice in the judicial branch of state government shall provide information to the State Treasurer concerning any debt it has referred to the Revenue Cabinet for collection under Section 1 of this Act.

Section 3. KRS 131.030 is amended to read as follows:

(1) The Revenue Cabinet shall exercise all administrative functions of the state in relation to the state revenue and tax laws, the licensing and registering of motor vehicles, the equalization of tax assessments, the assessment of public utilities and public service corporations for taxes, the assessment of franchises, the supervision of tax collections, and the enforcement of revenue and tax laws, either directly or through supervision of tax administration activity in other departments to which the Revenue Cabinet may commit administration of certain taxes.

(2) The Revenue Cabinet shall have all the powers and duties with reference to assessment or equalization of the assessment of property heretofore exercised or performed by any state board or commission.

(3) The Revenue Cabinet shall have all the powers and duties necessary to consider and settle tax cases under KRS 131.110 and refund claims made under KRS 134.580. The Revenue Cabinet is encouraged to settle controversies on a fair and equitable basis and shall be authorized to settle tax controversies based on the hazards of litigation applicable to them.

(4) The Revenue Cabinet shall have all the powers and duties necessary to collect any debts owed to the Commonwealth that are referred to the cabinet by an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010, and by the Court of Justice in the judicial branch of state government under Section 1 of this Act.

Section 4. KRS 131.565 is amended to read as follows:

(1) ***For purposes of this section, "state agency" or "state agencies" shall include the Court of Justice as defined in Section 1 of this Act.***

(2) No state agency shall request the withholding of any individual income tax refund unless there is specific~~[statutory]~~ provision ***in statute or administrative regulation*** for debtor appeal and hearing rights for that particular debt.

(3)~~[(2)]~~ State agencies ***having the statutory and regulatory provisions described in subsection (2) of this section shall***~~[desiring to]~~ establish claims against Kentucky individual income tax refunds ***by notifying***~~[shall notify]~~ the secretary of revenue in writing~~[of such intention]~~ by a date established by the Revenue Cabinet and, by ***dates agreed to by the Revenue Cabinet and each state agency***~~[the following December 31]~~, shall furnish a list of all liquidated debts due the agency for which withholding is ***required***~~[requested]~~ for individual income tax refunds due to be paid ***to the debtor of the claimant agency***~~[during the next calendar year]~~. ***This***~~[Such]~~ list shall be submitted in such form and contain such information as may be required by the secretary of revenue to facilitate identification of the refunds to be withheld. As used in this section the term "liquidated debt" means a legal debt for a sum certain, which has been certified by the claimant agency as final due and owing. The claimant agency must have made reasonable efforts to collect such debt, and must have provided the debtor the opportunity for appeal and formal hearing as provided by statute. The claimant agency ***shall***~~[must]~~ send thirty (30) days′ prior written notification to the debtor of the intention to submit the claim to the Revenue Cabinet for setoff as provided in KRS 131.570.

(4)~~[(3)]~~ The individual income tax refund withholding procedures provided in KRS 131.560 to 131.595 shall be in lieu of the procedures set forth in KRS 427.130 and 44.030 only with regard to sums due to a debtor from the Revenue Cabinet.

(5)~~[(4)]~~ No state agency shall request the withholding of any individual income tax refund unless the debt for which withholding is requested is in a liquidated amount.

(6)~~[(5)]~~ Each state agency requesting the withholding of any individual income tax refund shall indemnify the Revenue Cabinet against any and all damages, court costs, attorneys fees and any other expenses related to litigation which arises concerning the administration of KRS 131.560 to 131.595 as it pertains to a refund withholding action requested by such agency.

(7)~~[(6)]~~ Those state agencies requesting the withholding of individual income tax refunds shall, on a per unit cost or other equitable basis determined by the Revenue Cabinet, reimburse the Revenue Cabinet for all development, implementation and administration costs incurred but not otherwise funded under the provisions of KRS 131.560 to 131.595.

(8)~~[(7)]~~ ~~[During the development and implementation phase and the first full year of operation of the program,]~~The Revenue Cabinet may ***decline the withholding of individual income tax refunds from agencies if the request would adversely impact the operation of the Revenue Cabinet***~~[limit agency participation in the program to ensure orderly implementation of the system]~~.

Section 5. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Revenue Cabinet:

(1) The cabinet may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.

(2) The cabinet, by representatives appointed by it in writing, may take testimony or depositions, and may examine the records, documents, files, and equipment of any taxpayer or of any person whose records, documents, or equipment will furnish knowledge concerning the tax liability of any taxpayer, when it deems this reasonably necessary for purposes incident to the performance of its functions. The cabinet may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the cabinet.

(3) The cabinet shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.

(4) The cabinet shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.

(5) Attorneys employed by the cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Revenue Cabinet attorney undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.

(6) In the event of the incapacity of attorneys employed by the cabinet or at the request of the secretary of the Revenue Cabinet, the Attorney General or his designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.

(7) The cabinet may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the cabinet for administration.

(8) The cabinet may conduct research in the fields of taxation, finance, and local government administration, and publish its findings, as the secretary may deem wise.

(9) The cabinet may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require such taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.

(10) The cabinet may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, the motor fuels tax, or the petroleum environmental assurance fee.

(11) The cabinet may enter into annual memoranda of agreement with any state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization to assume the collection duties for any~~[liquidated]~~ debts due the state entity and may renew that agreement for up to five (5) years. Under such an agreement, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of those liquidated debts as provided under:

(a) KRS Chapters 131, 134, and 135 for the collection, refund, and administration of delinquent taxes; and

(b) Any applicable statutory provisions governing the state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization for the collection, refund, and administration of any liquidated debts due the state entity.

Section 6. KRS 131.585 is amended to read as follows:

There is hereby created within the Revenue Cabinet a state debt offset account, which will be subject to the provisions of the restricted fund group, as provided in KRS 48.010(13)(f), and all funds collected under KRS 131.565***(6)***~~[(5)]~~ shall be credited thereto with only the expenses of the Revenue Cabinet related to development, implementation and administration of KRS 131.560 to 131.595 to be paid therefrom. This account shall not lapse.

SECTION 7. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) The Court of Justice shall initiate, by October 1, 2004, fully implement by October 1, 2005, and thereafter maintain a system for tracking and identifying debts.

(2) The Court of Justice, Justice Cabinet, and Revenue Cabinet shall collaborate to implement a system, if feasible, to identify and collect liquidated debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify

and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually to the Legislative Research Commission beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.

Approved April 9, 2004

CHAPTER 119

(HB 322)

AN ACT relating to children with disabilities.

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

Section 1. KRS 200.505 is amended to read as follows:

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

(1) This council shall be composed of the following:

(a) Members who shall serve by virtue of their positions: the commissioner of the Department of Education, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner of the Department for Community Based Services, the commissioner of the Department for Public Health, the commissioner of the Department for Medicaid Services, the commissioner of the Department of Juvenile Justice, ***the director of the Office of Family Resource and Youth Services Centers, and the general manager of the Office of Juvenile Services***~~[and the executive director]~~ of the Administrative Offices of the Courts, or their designees; and

(b) The Governor shall appoint one (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability to serve as a member of the council, and one (1) parent who meets the same criteria to serve as the parent member's alternate to serve in the absence of the parent member. For each appointment to be made, the State Family Advisory Council shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment. The alternate parent member may attend and participate in all council meetings but shall vote only in the absence of the parent member. The parent member and alternate parent member shall receive no compensation in addition to that which they may already receive as service providers or state employees, but the parent member and alternate parent member shall be reimbursed for expenses incurred through the performance of their duties as council members.

(2) The State Interagency Council for Services to Children with an Emotional Disability shall:

(a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;

(b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;

(c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child;

(d) Review service and treatment plans for children for whom reviews are requested, and provide any advice and assistance that the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;

(e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;

(f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B;

(g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;

(h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council;

(i) Develop services to meet the needs of children with an emotional disability; and

(j) Promote services to prevent the emotional disability of a child.

(3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disorders established in KRS 210.575, and the Kentucky Commission on Services and Supports to Individuals with Mental Illness, Alcohol and Other Drug Disorders, and Dual Diagnoses established in KRS 210.502 shall, by August 1, 2004, establish a joint ad hoc committee on transitioning from children's services systems to adult services systems for children who will continue to need services or supports after reaching age twenty-one (21).

(2) The co-chairpersons of each commission shall each designate a joint ad hoc committee chairperson and appoint up to ten (10) members for the joint ad hoc committee. At least seventy-five percent (75%) of the membership shall be composed of family members of consumers of adult or child services, advocates, and nonprofit and community-based providers of adult and child services and supports. Members of the commissions may serve as a chairperson and may be appointed to the ad hoc committee.

(3) The joint ad hoc committee shall develop recommendations for implementation of specific plans of action to meet the needs of children who transition to adult services systems.

(4) The joint ad hoc committee shall make a preliminary report by October 30, 2004, and shall make a final report by December 30, 2004, to both commissions and to the Interim Joint Committee on Health and Welfare.

SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) A postsecondary education institution as defined in KRS 164.948 shall provide priority for first floor housing to any student who informs the institution of a disability, or a sensory, cognitive, or neurological deficit or impairment, or a learning disorder, minimal brain dysfunction, dyslexia, pervasive developmental disorder, autism, or Asperger syndrome. As used in this section, "disability" has the same meaning as in KRS 344.010.

(2) If the postsecondary education institution does not have available first floor housing for a student as provided under subsection (1) of this section, the postsecondary education institution shall allow the student to seek alternative on-campus or off-campus housing. The postsecondary education institution shall maintain a record of any on-campus housing assignment for that student and shall alert appropriate safety and emergency personnel of the location of the student.

Approved April 9, 2004

CHAPTER 120

(HB 362)

AN ACT relating to alcoholic beverages.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that Sections 1 to 3 of this Act are necessary in order to:

(1) Provide an orderly three (3) tier system for the distribution and sale of quality malt beverages in the Commonwealth of Kentucky;

(2) Promote the public health, safety, and welfare of the people of the Commonwealth of Kentucky; and

(3) Provide a distribution system of malt beverages that will facilitate the collection and accountability of state and local taxes.

SECTION 2. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act, unless the context requires otherwise:

(1) "Good cause" means failure by a distributor to comply with the provisions of an agreement as delineated therein, which provisions are not unconscionable. Good cause shall not include:

(a) The failure or refusal of the distributor to engage in any trade practice or activity which would violate federal or state law;

(b) The failure or refusal of the distributor to take any action which would be contrary to these provisions;

(c) The sale or purchase of a brewer or importer; and

(d) The implementation by a brewer or importer of a national or regional policy of consolidation unless the policy:

1. Is reasonable, nondiscriminatory, and essential;

2. Results in a contemporaneous reduction in the number of a brewer's or importer's distributors not only for a brand in this state, but also for that brand in contiguous states or in a majority of the state in which the brewer or importer sells that brand; and

3. Was previously disclosed in writing and in reasonable detail by the brewer or importer implementing the policy to all affected distributors at least one hundred eighty (180) days prior to the implementation of the policy.

The term "affected distributor" means distributors who may reasonably be expected to experience a loss or diminishment of a right to distribute a brand, in whole or in part as a consequence of a proposed consolidation policy.

(2) "Good faith" means honesty in fact and the observance of reasonable commercial standard of fair dealing in the trade, as defined under KRS Chapter 355.

SECTION 3. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

(1) Every brewer and importer of malt beverages shall contract and agree in writing with each of its distributors to provide and specify the rights and duties of the brewer, the importer, and the distributor with and in regard to the sale of the products of the brewer or the importer within the Commonwealth of Kentucky. The terms and provisions of the contracts shall comply with and conform to Sections 1 to 3 of this Act and to all other applicable statutes.

(2) The terms or provisions of any contract or agreement among any brewers, importers, or distributors, including contracts or agreements entered into after the effective date of this Act and any renewals or extensions of contracts existing prior to the effective date of this Act, shall not permit a brewer or importer of malt beverages to:

(a) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor, except for good cause and in good faith;

(b) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor without first giving the distributor written notice of any alleged deficiency on the part of the distributor and giving the distributor a reasonable opportunity of sixty (60) to one hundred twenty (120) days to cure the alleged deficiency;

(c) Unreasonably withhold timely consent to a proposed sale or transfer, in part or whole, of the stock or assets of the distributor, and in no event shall the brewer take more than thirty (30) days to approve or disapprove the proposed sale or transfer after the brewer has received written notice of the proposal from the distributor and received all requested information from the distributor to enable the brewer to pass upon the proposed sale or transfer;

(d) Assign an agreement, in part or in whole, with a distributor, except with consent from the distributor which shall not be unreasonably withheld. No consent is required where the distributor has proposed to transfer an ownership interest in its business and the brewer exercises its right to purchase this ownership interest in accordance with a written agreement between the brewer and distributor, subject to the brewer or its designee purchasing the ownership interest at the price and on the conditions applicable to the proposed change.

(e) Enter into a contract with more than one (1) distributor to sell any of its products or brand within the same territory or area at the same time. This paragraph shall not apply to contracts entered into prior to January 1, 2004, or future renewals of such contracts, to the extent the existing contract and the future renewal allow different distributors to sell certain but not all of the brewer's or importer's brands or brand extensions within the same territory or area at the same time;

(f) Unilaterally amend its agreement or any document referred to or incorporated by reference in its agreement, with any distributor, except modifications contemplated by the brewer-distributor agreement which modifications occur after written notice to the distributor or amendments that occur by a brewer after having consulted with an advisory panel of distributors;

(g) Terminate an agreement with a distributor because the distributor refuses or fails to accept an unreasonable amendment to the agreement proposed by the brewer or importer;

(h) Require a distributor to arbitrate disputes which may arise between it and the brewer or the importer unless mutually agreed to by the parties to the agreement;

(i) Preclude a distributor from litigating in state or federal courts located in Kentucky or from litigating under the laws of the Commonwealth;

(j) Retaliate against its distributor in the application of the terms of a written agreement;

(k) Unreasonably fail to consent to the distributor's designation of an individual as the distributor's manager or successor-manager in accordance with nondiscriminatory and reasonable qualifications and standards; or

(l) Withdraw approval of an individual as the distributor's manager or successor-manager without just cause.

(3) Notwithstanding the provisions in subsection (2) of this section, a brewer or importer of malt beverages may terminate an agreement with a distributor if any of the following occur:

(a) The assignment or attempted assignment by the distributor for the benefit of creditors, the institution of proceedings in bankruptcy by or against the distributor, the dissolution or liquidation of the distributor, the insolvency of the distributor or the distributor's failure to pay for malt beverages in accordance with the agreed terms;

(b) Failure of any owner of the distributor to sell his or her ownership interest within one hundred twenty (120) days after the later of the owner having been convicted of a felony which, in the sole judgment of the brewer, may adversely affect the goodwill or interests of the distributor or the brewer, or the brewer learns of the conviction;

(c) Fraudulent conduct of the distributor in any of its dealings with the brewer or the brewer's products;

(d) Revocation or suspension for more than thirty-one (31) days of the distributor's federal basic permit or any state or local license required of the distributor for the normal operation of its business;

(e) Sale of malt beverages by a distributor outside its sales territory prescribed by the brewer in accordance with KRS 244.585; or

(f) Without brewer consent, the distributor engaging in changes in ownership or possession of ownership interests, the establishment of trusts or other ownership interest, entering into buy-sell agreements, or granting an option to purchase an ownership interest.

(4) During the term of a contract or agreement between the brewer or importer and a distributor, including contracts or agreements in existence prior to the effective date of this Act, the distributor shall, in accordance with the provisions of such contract or agreement, maintain physical facilities and personnel so that the product and brand of the brewer or importer are properly represented in the territory of the distributor, the reputation and trade name of the brewer or importer are reasonably protected, and the public is serviced. The brewer, importer, and distributor shall act in good faith at all times during the term of the contract or agreement.

(5) Any brewer, importer, or distributor who violates any provision of this section shall pay the injured brewer or distributor all reasonable damages sustained by it as a result of the brewer's, importer's, or distributor's violations, together with the costs incurred by the brewer or distributor in protecting its right. If a brewer or importer violates subsection (2)(a) or (b) of this section, the injured distributor's reasonable damages shall be the fair market value of the distributor's business, unless there are liquidated damages agreed by the parties in the agreement. In determining the fair market value of the wholesaler's or distributor's business, proper and full consideration shall be given to all elements of value, including goodwill and going-concern value. The court may in its discretion consider attorney's fees reasonably incurred as a result of the prohibited conduct.

Section 4. KRS 244.590 is amended to read as follows:

No brewer or distributor shall induce through any of the following means any malt beverage retailer to purchase any malt beverages from him to the exclusion in whole or in part of malt beverages sold or offered for sale by other persons, if the brewer or distributor engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in commerce in malt beverages:

(1) By acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the premises of the retailer;

(2) By acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business;

(3) By furnishing, giving, renting, lending or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other things of value, except as the administrator of the malt beverage unit, having regard for the public health, the quantity and value of the articles involved, the prevention of monopoly and the practice of deception, may by regulation otherwise prescribe;

(4) By paying or crediting the retailer for any advertising, display or distribution service subject to the exceptions which the administrator may by regulation prescribe;

(5) By guaranteeing any loan or the repayment of any financial obligation of the retailer;~~[or]~~

(6) By requiring the retailer to take and dispose of a certain quota of any malt beverages***;***

(7) Notwithstanding any provisions in KRS Chapter 244 and this section, a brewer or distributor may:

(a) Give, rent, loan, or sell to a malt beverage retailer signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in windows or elsewhere in the interior of a retail malt beverage establishment; and

(b) Provide or furnish draught line cleaning or coil-cleaning service to a malt beverage retailer either directly or indirectly with the consent of the distributor.

Approved April 9, 2004

CHAPTER 121

(HB 434)

AN ACT relating to retired teachers and declaring an emergency.

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

Section 1. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and KRS 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

(a) Local boards of education;

(b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;

(c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

(d) The State Department of Education, the Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

(e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

(f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) ***Employees of the Council on Postsecondary Education who were employees of*** the Department for Adult Education and Literacy ***and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600***[~~, except that the commissioner shall not be a member~~]***;***

(h) The Department for Technical Education, except that the commissioner shall not be a member;

(i) The Department of Vocational Rehabilitation;

(j) The Kentucky Educational Collaborative for State Agency Children;

(k) The Governor's Scholars Program;

(l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;

(m) Employees of the Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement

System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

(n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620; and

(o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the Cabinet for Workforce Development and the commissioners of the Department for Adult Education and Literacy and the Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS ***158.6455 or*** 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

(13) "Regular interest" means interest at three percent (3%) per annum;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;

(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;

(21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;

(22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400; and

(23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the ***most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance***~~[twelve (12) months immediately preceding the~~

~~member's effective retirement date]~~, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment.

Section 2. KRS 161.260 is amended to read as follows:

An election shall be held on or before June 1 of each year to elect trustees. The trustees to be elected each year shall depend upon the respective terms of the trustees elected under Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 7 and Acts 1940, Ch. 192, paragraph 7a, and KRS 161.250. Each trustee shall assume office on July 1 following his election and shall serve for a term of four (4) years. The elections shall be conducted by ballot under the supervision of the chief state school officer. Each person who is a contributing member ***as a result of full-time employment in a position covered by the retirement system*** or ***who is*** an annuitant of the retirement system shall have the right to vote. ***Each person who is a contributing member as a result of part-time or substitute employment in a position covered by the retirement system shall be permitted to vote as provided in Section 17 of this Act.*** Nominations for trustees shall be made by a nominating committee consisting of one (1) committee member selected by the retirement system membership of each of the districts of the Kentucky Education Association, and one (1) committee member to be selected by retired teachers, on a statewide basis, from among the annuitants of the retirement system. No person may be a member of the nominating committee who is not a member of the system, except for the committee member to be selected from among the annuitants of the system. The president of the Kentucky Education Association shall preside over the meeting of the nominating committee and the secretary of the Teachers' Retirement System shall act as secretary to the committee. Two (2) persons shall be nominated by the nominating committee for each position to be filled. All expenses of the election shall be paid by the board of trustees out of its general expense fund.

Section 3. KRS 161.340 is amended to read as follows:

(1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3) The board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 12, 13B, 45, 45A, 56, and 57**,** and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.

(4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.

(6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.

Section 4. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration,

amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. A member may not borrow any amount of his or her accumulated contributions to this fund, or any interest earned thereon. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;

(3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities ***and*** ~~[,]~~ survivor benefits, ~~[and death benefits,]~~ including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520 ***and*** ~~[,]~~ 161.525 ~~[, and 161.655]~~;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520 ***and*** ~~[,]~~ 161.525 ~~[, and 161.655]~~. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;

(5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (1/2) of this amount shall derive from member contributions and one-half (1/2) from a state appropriation. The board of trustees may allocate the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550. ***In addition, the medical insurance fund shall be funded by the employer medical insurance fund stabilization contribution as set forth in Section 12 of this Act.*** The medical insurance fund shall receive all interest income from the investments of the fund. All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits;

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year;

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by a retired member of the Teachers' Retirement System with

accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program;

(8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program; ***and***

~~(9)[The defined contribution fund shall consist of those funds contributed by retired members who have been approved by the retirement system for full-time reemployment in a position covered by the retirement system and contributions made by the employer for the purpose of providing separate retirement allowances for periods of reemployment. Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program. The contributions shall not be picked up as provided in KRS 161.540(2); and~~

~~(10)]~~ The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655.

Section 5. KRS 161.430 is amended to read as follows:

(1) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities. The board shall employ experienced competent investment counselors to advise it on all matters pertaining to investment, except the board may employ qualified investment personnel to advise it on investment matters not to exceed fifty percent (50%) of the book value of the system's assets. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors or staff employees, shall adhere to "The Code of Ethics" and "The Standards of Professional Conduct" promulgated by the Association for Investment Management and Research. Effective July 1, 1991, no investment counselor shall manage more than forty percent (40%) of the funds of the retirement system. The board may appoint an investment committee consisting of the executive secretary and two (2) trustees to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(2) The board members and investment counselor shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:

(a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent ***person***~~[man]~~ acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the laws, administrative regulations, and other instruments governing the system.

(3) (a) In choosing and contracting for professional investment management services the board must do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment counselor shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management services shall be financed from the guarantee fund in amounts approved by the board.

(b) An investment counselor appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund. To be eligible for appointment, an investment counselor must be:

1. Registered under the Federal Investment Advisors Act of 1940; or

2. A bank as defined by that Act; or

3. An insurance company qualified to perform investment services under the laws of more than one (1) state.

(4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines, by administrative regulation, and may permit its staff and investment counselors employed pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.

Section 6. KRS 161.480 is amended to read as follows:

Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary ***or two (2) or more co-beneficiaries*** to receive any benefits accruing from the death of the member. A contingent beneficiary may be designated in addition to the primary beneficiary ***or co-beneficiaries. The member may name more than one (1) contingent beneficiary***. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the Kentucky Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary ***and any co-beneficiary*** designation and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary ***beneficiary, co-beneficiary,*** or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary ***beneficiary, co-beneficiary,*** or contingent beneficiary. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's contributions to the retirement system as provided under KRS 161.470(7)~~[and 161.650, and for receipt of the life insurance benefit provided under KRS 161.655]~~. ***A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.*** The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. ***The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under Section 23 of this Act.***

Section 7. KRS 161.507 is amended to read as follows:

(1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to

covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

(2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

(4) (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall pay to the retirement system the full actuarial cost of the service credit purchased as provided under KRS 161.220(22).~~[Two percent (2%) of the required payment shall be allocated to the medical insurance fund.]~~ These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.

(b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.

(5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum. The member shall pay the full actuarial cost of this service in the military reserves or the National Guard as provided in KRS 161.220(22). Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

Section 8. KRS 161.515 is amended to read as follows:

(1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position ***on a full-time basis***, which would be covered if in Kentucky.

(2) (a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. With the exception of university faculty members, all members who elect to purchase this service shall pay to the retirement system an amount equal to the current member contribution rate based on the first Kentucky salary of the member subsequent to the out-of-state service, provided this service was rendered after June 30, 1983. In the event this service was rendered prior to July 1, 1983, the contribution rate shall be seven and eighty-four hundredths percent (7.84%). University faculty members shall pay on a contribution rate of seven and eighty-four hundredths percent (7.84%) based on the first Kentucky salary subsequent to the out-of-state service, regardless of when the service was rendered. Members shall pay to the retirement system the employer contribution at the rates set forth in KRS 161.550. In addition, all members shall pay interest on the contributions for this service at a rate to be set by the board of trustees on each annual contribution from the last day of the scholastic year in which the service was rendered to date of payment to the retirement system. The payments shall not be picked up as described in KRS 161.540(2). For each year of which the retirement system shall accept

the contribution and interest, one (1) year of service credit shall be given. This credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds;

(b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit; and

(c) A member having service referred to in subsection (2)(a) or (2)(b) of this section may elect to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.

(3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.

(4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.01-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.

(5) Notwithstanding any other provisions of this section to the contrary, purchase of service credit for out-of-state teaching, Kentucky Peace Corps, and federal Peace Corps service on July 1, 2005, or thereafter shall be purchasable only at full actuarial cost.

Section 9. KRS 161.520 is amended to read as follows:

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

(1) Where there is a surviving widow or widower who is named as ***the primary*** beneficiary of the member's retirement account, the benefit shall be:

(a) One hundred eighty dollars ($180) per month with no restriction on other income;

(b) Two hundred forty dollars ($240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars ($6,600) per year or five hundred fifty dollars ($550) per month; or

(c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.600(1). In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision.

(2) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars ($200) per month in the case of one (1) child,

three hundred forty dollars ($340) per month in the case of two (2) children, four hundred dollars ($400) per month in the case of three (3) children, and four hundred forty dollars ($440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.

(3) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars ($200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection and subsection (2) of this section shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(13). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.

(4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars ($200) per month for one (1) parent or two hundred ninety dollars ($290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member.

(5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars ($165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period.

(6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency.

(7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary.

(8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable.

(9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, the board of trustees shall pay to the estate or assigns of the deceased member a refund of his accumulated contributions as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated contributions at the time of death, the board of trustees shall pay to the estate or assigns of the deceased member the balance of the accumulated contributions.

(10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits.

Section 10. KRS 161.525 is amended to read as follows:

(1) Upon death of a member in active contributing status at the time of death, who was eligible to retire by reason of service, the spouse, if named as ***the primary*** beneficiary of the member's retirement account, or in the absence of an eligible spouse a legal dependent of the member, if named as ***the primary*** beneficiary, shall be entitled to elect, in lieu of a refund of the member's account or benefits provided in KRS 161.520, an annuity actuarially equivalent at the attained age of the beneficiary to the annuity that would have been paid to the

deceased member had retirement been effective on the day immediately preceding the member's death. Under the provisions of KRS 61.680, benefits shall be processed as if the member retired for service. In exercising this right the spouse or legal dependent shall be limited to selecting an option providing either a straight life annuity with refundable balance or a term certain option. A spouse may receive the annuity provided by this section at the same time as children are qualifying for survivors' benefits under the provisions of KRS 161.520; however, a legal dependent, other than a spouse, may not receive these payments if children have qualified for benefits under that section.

(2) A spouse~~[or legal dependent]~~ qualifying for an annuity under subsection (1) of this section may defer the payments in order to reduce the actuarial discounts to be applied due to age.

(3) Upon death of a member in active contributing status at the time of his death, who had a minimum of twenty-seven (27) years of service, the spouse, if named as the ***primary*** beneficiary of the member's account shall be entitled to a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This provision applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1986, and to surviving spouses of members who die on or after July 1, 1986.

Section 11. KRS 161.545 is amended to read as follows:

(1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service. Members placed on leave of absence may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence since July 1, 1964, for reasons of health ***as defined under the Federal Family Medical Leave Act of 1993, 29 U.S.C. secs. 2601 et seq.***, child rearing, or to improve their educational qualifications, and did not qualify at the time of the leave of absence to make contributions to the retirement system for the leave of absence as provided in subsection (1) of this section, may obtain credit for the leave of absence under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence ***or by other documentation that was generated contemporaneously with the leave that is determined by the retirement system to reasonably establish that a leave of absence was granted***; and

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

Section 12. KRS 161.550 is amended to read as follows:

(1) Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the retirement system a permanent amount equal to that contributed by members of the retirement system it employs plus an additional three and one-fourths percent (3.25%) of the total of salaries of members of the retirement system it employs to discharge the system's unfunded obligations with interest assumed by the state and to provide funding to the medical insurance fund as provided under KRS 161.420(5).

(2) In addition to the required contributions in subsection (1) of this section, the state shall contribute annually to the retirement system a percentage of the total salaries of the state-funded and federally funded members it employs to provide stabilization funding for the medical insurance fund. This contribution shall be known as the state medical insurance fund stabilization contribution. The percentage to be contributed by the state shall be determined by the retirement system's actuary for each biennial budget period. The percentage to

be contributed by the state may be suspended or adjusted by the General Assembly if in its judgment the welfare of the Commonwealth so demands.

(3) Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.507(4); 161.515; 161.545; 161.553; 161.605; 161.612; and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

Section 13. KRS 161.553 is amended to read as follows:

(1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a), (1)(b), and (1)(c) of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, ***2006***~~[2004]~~:

(a)

Cost of Living Allowance	***2004-2005***~~[2002-2003]~~	Each Succeeding Fiscal Year
~~[1988-1990~~	~~$5,761,700~~	~~$2,972,700 in 2003-2004]~~
1990-1992	$4,901,700	~~[$4,901,700 through 2004-2005 and]~~ $2,486,800 in 2005-2006
1992-1994	$2,229,400	$2,229,400 through 2006-2007 and $1,125,700 in 2007-2008
1994-1996	$6,142,000	$6,142,000 through 2010-2011
1996-1998	$4,459,000	$4,459,000 through 2010-2011
1998-2000	$15,333,900	$15,333,900 through 2012-2013 and $7,938,600 through 2013-2014
2000-2002	$12,511,400	$12,511,400 through 2014-2015 and $7,227,700 in 2015-2016

	2002-2004	***$21,405,700***~~[$4,406,000~~	~~$9,213,400 in 2003-2004]~~
			$21,405,700~~[$21,405,600]~~ through 2021-2022
			and
			$11,204,100~~[$11,204,000]~~ in 2022-2023
(b)	Minimum Value Annuities	***2004-2005***~~[2002-2003]~~	Each Succeeding Fiscal Year
~~[~~	~~1988-1990~~	~~$1,718,200~~	~~$879,500 in 2003-2004]~~
	1990-1992	$2,246,900	~~[$2,246,900 through 2004-2005 and]~~
			$1,232,100 in 2005-2006
	1992-1994	$2,217,700	$2,217,700 through 2006-2007
	1994-1996	$2,126,000	$2,126,000 through 2008-2009
	2002-2004	***$3,375,900***~~[$694,800~~	~~$1,451,800 in 2003-2004]~~
			$3,375,900 through 2016-2017
			and
			$2,027,800 in 2017-2018
(c)	Sick Leave Allowance	***2004-2005***~~[2002-2003]~~	Each Succeeding Fiscal Year
	1998-2000	$4,660,300	$4,660,300 through 2012-2013
			and
			$2,425,900 through 2013-2014
	2000-2002	$6,167,100	$6,167,100 through 2014-2015
			and
			$3,579,100 in 2015-2016

2002-2004	***$6,282,500***~~[$3,668,400]~~	***$6,282,500***~~[$7,636,700]~~ through 2021-2022 and $3,968,300 in 2022-2023
2004-2006	***$3,669,700***	***$8,009,200 through 2023-2024 and $4,339,500 in 2024-2025***

(2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	$34,689,893
1990-1992	$68,107,473
1992-1994	$15,749,976

Section 14. KRS 161.597 is amended to read as follows:

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the ***total cost of the service purchase, including any chargeable interest,***~~[member contribution plus interest of eight percent (8%) per annum]~~ shall exceed one thousand dollars ($1,000).

(4)~~[A member may select the service credit to be purchased by installment payments and that service credit shall be purchased before any other credit may be purchased by installment payments.~~

~~(5)]~~ Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months. ***Interest at eight percent (8%) per annum, unless the board specifies in an administrative regulation a different interest rate, shall be charged on all installment payment purchases of service credit that are purchasable at less than full actuarial cost.***

(5)~~[(6)]~~ Installment payments shall be made on a monthly basis by payroll deduction or electronic fund transfer and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560***, except that subject to approval by the Internal Revenue Service and only as permitted by the Internal Revenue Code, installment payments by payroll deduction shall be made on a tax-deferred basis***.

(6)~~[(7)]~~ A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate installment payments. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(7)~~[(8)]~~ If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

Section 15. KRS 161.600 is amended to read as follows:

(1) Effective July 1, 1988, a member of the retirement system may qualify for service retirement by meeting one (1) of the following requirements:

(a) Attainment of age sixty (60) years and completion of five (5) years of Kentucky service;

(b) Attainment of age fifty-five (55) years and completion of a minimum of five (5) years of Kentucky service with an actuarial reduction of the basic allowance of five percent (5%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number;~~[or]~~

(c) Completion of twenty-seven (27) years of Kentucky service. Out-of-state service earned in accordance with the provisions of KRS 161.515(2) may be used to meet this requirement***; or***

(d) Completion of the necessary years of service under provisions of KRS 61.559(2)(c) if the member is retiring under the reciprocity provisions of KRS 61.680. A member retiring under this paragraph who has not attained age fifty-five (55) shall incur an actuarial reduction of the basic allowance determined by the system's actuary for each year the member's service credit is less than twenty-seven (27).

(2) Any person who has been a member in Kentucky for twenty-seven (27) years or more and who withdraws from covered employment may continue to pay into the fund each year until the end of the fiscal year in which he reaches the age of sixty-five (65) years, the current contribution rate based on the annual compensation received during the member's last full year in covered employment, less any payment received for accrued sick leave or accrued leave from an employer. The member shall be entitled to receive a retirement allowance as provided in KRS 161.620 at any time after withdrawing from covered employment and payment of contributions under this subsection. No member shall make contributions as provided for in this subsection if the member is at the same time making contributions to another retirement system in Kentucky supported wholly or in part by public funds.

(3) Service credit in the Kentucky Employees Retirement System, the State Police Retirement System, the Legislators' Retirement Plan, the County Employees Retirement System, or the Judicial Retirement System may be used in meeting the service requirements of subsection (1)(a), (b), and (c) of this section, provided the service is subsequent to July 1, 1956. Upon death, disability, or service retirement, a member's accounts under all state supported retirement systems shall be consolidated, as provided by this section and by KRS 61.680, for the purpose of determining eligibility and amount of benefits, which shall include medical benefits. Upon determination of benefits, each system shall pay the applicable percentage of total benefits. The effective date of retirement under this subsection shall be determined by each retirement system for the portion of the payments that will be made.

(4) No retirement annuity shall be effective until written application and option election forms are filed with the retirement office in accordance with administrative regulations of the board of trustees.

(5) The surviving spouse of an active contributing member, if named as beneficiary of the member's account, may purchase retirement credit that the member was eligible to purchase prior to the member's death.

Section 16. KRS 161.605 is amended to read as follows:

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

(1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Service credit purchased under the provisions of KRS 161.5465 may not be used to meet the thirty (30) year requirement set forth in this subsection.

(2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered.

(3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable including but not limited to data provided by the Education Professional Standards Board and the Department of Education to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall assure that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis.

(4) Under this section, an employer may employ full-time a number of retired members not to exceed ***three percent (3%)***~~[four percent (4%)]~~ of the membership actively employed full-time by that employer. The board of trustees may reduce this ***three percent (3%)***~~[four percent (4%)]~~ cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the ***three percent (3%)***~~[four percent (4%)]~~ cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met. ***A district's written request to exceed its quota shall be submitted no sooner than two (2) weeks after the start of the school year.***

(5) A member returning to work in a full-time or part-time position under subsection (1) or (2) of this section will ***contribute to an***~~[establish a second]~~ account with the retirement system that will be administered independently from and with no reciprocal impact with the member's original retirement account. A member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The second account shall independently meet the five (5) year vesting requirement as well as all other conditions set forth in KRS 161.600(1) before any retirement allowance is payable from this account. The retirement allowance accruing under this second account shall be calculated pursuant to KRS 161.620(1)(b). This second account shall not entitle the member to a duplication of the benefits offered under KRS 161.655***, Section 19(7) of this Act,*** or 161.675, nor shall this second account provide the benefits offered by KRS 161.520, 161.525, 161.661, or 161.663. A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the Kentucky Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's initial retirement. A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470.

(6) The board of trustees may annually ***on July 1*** adjust the ***current*** daily rate of a member's last annual compensation, for each~~[year that the member has been retired for a]~~ full twelve (12) month period ***that has elapsed subsequent to the member earning his or her last annual compensation***, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. ***Each annual adjustment shall become part of the member's daily rate base.*** Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations.

(7) ***(a)*** A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.

(b) As an alternative to the separation-from-service requirements in paragraph (a) of this subsection, a retired member who is returning to work for the same employer in a full-time position under subsections (1) and (2) of this section may elect a separation-from-service of not less than two (2) months followed by a forfeiture of the retired member's retirement allowance on a month-to-month basis for each month that the member has separated from service for less than twelve (12) full months. A retired member returning to work for the same employer in a part-time position, or for a different employer in a full-time position, may elect an alternative separation-from-service requirement of at least two (2) months followed by a forfeiture of the member's retirement allowance for one (1) month. During the period that the member forfeits his or her retirement allowance and thereafter, member and employer contributions shall be made to the retirement system as a result of employment in any position subject to membership in the retirement system. The member shall contribute to an account with the retirement system subject to the conditions set forth in subsection (5) of this section. For purposes of measuring the separation-from-service requirements set forth throughout this section, a member's separation-from-service begins on the first day following the last day of paid employment for the member prior to retirement.

(c) Failure to comply with ***the***~~[these]~~ separation-from-service requirements ***in this subsection*** voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service.

(8) ***(a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. Under provisions of this subsection, a local school district may only employ retired members to fill critical shortage positions for which there are no other qualified applicants as determined by the local superintendent. The number of retired members that a local school district may employ under this subsection shall be no more than two (2) members per local school district or one percent (1%) of the total active members employed by the local school district on a full-time basis as defined under Section 1(21) of this Act, whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (7) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered to other full-time members employed by the local school district. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (5) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under Section 12 of this Act. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.***

(b) The Department of Education may employ retired members in full-time or part-time teaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Kentucky Virtual High School. The department shall be subject to the same requirements as local school districts as provided in paragraph (a) of this subsection.

(9) Members who retired on or before June 30, 2002, may, for the fiscal year concluding on June 30, 2007, be reemployed under the one hundred (100) day provisions of this section as they existed on June 30, 2002, except that members returning to work under those provisions shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540 and members' employers shall make contributions to the Kentucky Teachers' Retirement System at the rates specified under KRS 161.550. Those members returning to work under the one hundred (100) day provisions of this section as they existed on June 30, 2002, shall further waive their medical insurance coverage with the retirement system during the period of reemployment and will instead receive the medical insurance coverage generally provided by their active employer to other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. Notwithstanding any other statute to the contrary, retired members returning to work shall under no circumstances be permitted to purchase as service credit service provided under the one hundred (100) day provisions of this section as they existed on June 30, 2002. ***Any member who exceeds the one hundred (100) day limitation of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefits to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding one hundred (100) days.***

(10) ~~[(9)]~~ The return to work limitations set forth in this section and KRS 161.603 shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section and KRS 161.603. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection.

(11) ~~[(10)]~~ The provisions of subsections (1) to ***(9)*** ~~[(8)]~~ of this section are not subject to KRS 161.714.

(12) ~~[(11)]~~ ***Retired members may be employed in a part-time teaching capacity by an agency described*** ~~[Members retired from an agency listed]~~ in KRS 161.220(4)(b) or (n) ~~[may be employed in a part-time teaching capacity by one (1) of the universities or community colleges participating in the Teachers' Retirement System]~~, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. ***Retired*** members~~[retired from an agency listed in KRS 161.220(4)(b) or (n)]~~ may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by ***an agency described in Section 1(4)(b) or (n) of this Act*** ~~[one (1) of the universities or community colleges participating in the Teachers' Retirement System]~~ in a position that would otherwise be covered by the retirement system.~~[None of these members shall be subject to]~~ The return to work provisions set forth in subsections (1) to ***(9)*** ~~[(8)]~~ of this section ***shall not apply to retired members who return to work solely for an agency described in Section 1(4)(b) or (n) of this Act***. Calculation of the number of days ***and teaching hours*** for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. ***Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined.***

(13)~~[(12)]~~ When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (11) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (11) of this section.

(14) For retired members who return to work during any one (1) fiscal year in both a position described in Section 1(4)(b) or (n) of this Act and in a position described under another provision under Section 1(4) of this Act, and for retired members who return to work in a position described under Section 1(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

Section 17. KRS 161.612 is amended to read as follows:

Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the Kentucky Teachers' Retirement System, according to the conditions set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220***, excluding those public boards, institutions, and agencies described in Section 1(4)(b) and (n) of this Act***. Members providing part-time and substitute services shall participate in the retirement system as follows:

(1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS 161.600. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to KRS 161.620. Members providing part-time and substitute services who meet the service retirement conditions of KRS 161.600 may also be eligible to participate as approved by the board of trustees in the medical insurance program provided by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member, the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470.

(2) The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, ***Section 23 of this Act***~~[161.555]~~, 161.661, and 161.663. The board of trustees may adopt eligibility conditions under which members providing part-time or substitute services may participate in other benefits offered by the retirement system. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness.

(3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services.

(4) ***Notwithstanding any other provisions of this section to the contrary, instructional assistants who provide teaching services in the local school districts on a full-time basis in positions covered by the County Employees Retirement System who are used as substitute teachers on an emergency basis for five (5) days or less during any one (1) fiscal year shall not be considered members of the Teachers' Retirement System during that period in which they are serving as substitute teachers for five (5) days or less.***

(5) The board of trustees may adopt a pro rata methodology to determine the annual compensation of members providing part-time and substitute services in order to determine benefits provided under KRS 161.661 and 161.663. Members providing part-time and substitute services who had retirement contributions posted to

their accounts during the previous fiscal year and who have not had those contributions refunded to them are eligible to vote for the board of trustees.

(6) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(7) ~~[(5)]~~ The provisions of this section are not subject to KRS 161.714.

Section 18. KRS 161.614 is amended to read as follows:

A court order awarding additional back salary to or reinstating a member as a result of employment in a position covered by the Kentucky Teachers' Retirement System shall entitle the member to additional salary or service credit, or both, under the following circumstances:

(1) Members shall make contributions to the Kentucky Teachers' Retirement System at the rate set forth in KRS 161.540 and members' employers shall make contributions at the rate set forth in KRS 161.550, with interest accruing on all contributions at the rate of eight percent (8%) per annum from the end of each fiscal year that back salary or the reinstatement was ordered. Contributions, plus interest, shall be made for each year that back salary or reinstatement was ordered. No service or salary credit shall be credited to a member's account unless full contributions are paid to the Kentucky Teachers' Retirement System.

(2) The member may have court-ordered back salary credited to his or her account only to the extent that the member actually received payment for the back salary and only to the extent that the court-ordered back salary is within the salary scale that was available to the member in the covered position for the years that the back salary was awarded. Court-ordered back salary can be credited to the member's account only as permitted under KRS 161.220(9) and (10). ***The member may have court-ordered service credited to his or her account only after the retirement system has received the contributions and interest on the full compensation that would normally be earned in the position that is the subject of the litigation.***

(3) The member's employer ordered to pay back salary or to reinstate the member by a court of competent jurisdiction shall provide the retirement system with a breakdown of the back salary awarded to the member on a year-by-year basis.

(4) The calculations of the contributions and interest required to be paid for court-ordered back salary or reinstatement shall be provided by the retirement system to the member or the member's employer at the member's or employer's request. Requests for these calculations shall be made with at least two (2) weeks of advance notice to the retirement system to provide these calculations. The retirement system will calculate accrued interest as of the last day of the month during which payment of the full contributions are made.

(5) For purposes of this section, a settlement agreement that provides back salary or reinstatement, and is adopted by order or judgment of a court of competent jurisdiction or is referenced in an order dismissing the action as settled shall have the same effect as a court order adjudicating the matter. Orders entered by a government board or agency as a result of litigation conducted on an administrative hearing level shall be considered as court orders for the purposes of this section.

(6) Under no circumstances shall a member be entitled to service credit as a result of court-ordered reinstatement that is in violation of the provisions of KRS ***161.500*** ~~[161.550]~~.

Section 19. KRS 161.620 is amended to read as follows:

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are members under the provisions of KRS 161.220(4)(b) or (n) shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; and

(b) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon

retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary.

(c) The board of trustees may approve for members who initially retire on or after July 1, 2004, except those persons who are members under KRS 161.220(4)(b) or (n), a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714.

(d) The retirement allowance of a member at retirement***, as measured on a life annuity,*** shall not exceed the member's last ***yearly salary*** ~~[annual compensation]~~ or the member's final average salary, whichever is the greater amount. ***For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of Section 1(9) and (10) of this Act.***

(2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars ($400) effective July 1, 2002, and not less than four hundred forty dollars ($440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, ***2004*** ~~[2002]~~, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed ***eight-tenths of one percent (0.8%)*** ~~[one-and-four-tenths percent (1.4%)]~~ of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2002-2004 biennium budget appropriation.

(6) Effective July 1, ***2005*** ~~[2003]~~, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed ***seven-tenths of one percent (0.7%)*** ~~[one-and-one-half percent (1.5%)]~~ of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months

immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2002-2004 biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

Section 20. KRS 161.630 is amended to read as follows:

(1) A member, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves. No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.620. This section does not apply to disability allowances as provided in KRS 161.661(1).

(2) The ***retirement***~~[benefit]~~ option chosen by a retiree at the time of service retirement shall remain in force unless the retiree elects to make a change under the following conditions:

(a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement ***that provides***~~[to provide]~~ continuing benefits to ***a spousal***~~[the]~~ beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or

(b) Following marriage or remarriage, or the death~~[of a spouse, or the death]~~ of ***the***~~[any other]~~ designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.

(3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the~~[straight]~~ life annuity with refundable balance option or the predetermined years certain and life thereafter option.

(4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

Section 21. KRS 161.640 is amended to read as follows:

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year shall be no earlier than July 1 next following the end of such fiscal year. ***Notwithstanding any other statutory provisions to the contrary, members filling positions that customarily require twelve (12) months of service during a fiscal year cannot retire prior to July 1 without a corresponding pro rata reduction in salary and service credit. The board of trustees may determine which positions customarily require twelve (12) months of service during a fiscal year.***

(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.

(3) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All annuity and survivor monthly allowance payments shall be made by electronic fund transfer by December 31, 1998.

Section 22. KRS 161.650 is amended to read as follows:

(1) In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.

(2) The member may designate a primary beneficiary or two (2) or more co-beneficiaries to receive any remaining accumulated member contributions payable under this section. A contingent beneficiary may be designated in addition to the primary beneficiary or the co-beneficiaries. The member may designate two (2) or more contingent beneficiaries. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of any remaining accumulated member contributions. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent divorce. A final divorce decree shall terminate the beneficiary status of an ex-spouse, unless subsequent to divorce the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust. In the event that the member fails to designate a beneficiary, any remaining accumulated member contributions shall be payable to the member's estate.

Section 23. KRS 161.655 is amended to read as follows:

(1) Effective July 1, 2000, the Teachers' Retirement System shall***:***

(a) Provide a life insurance benefit in a minimum amount of five thousand dollars ($5,000) for its members who are retired for service or disability. This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system***; and***

(b) ~~[. The Teachers' Retirement System shall]~~Provide a life insurance benefit in a minimum amount of two thousand dollars ($2,000) for its active contributing members. This life insurance benefit shall be payable upon the death of an active contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system.

(2) The member may name one (1) primary and one (1) contingent beneficiary for receipt of the life insurance benefit. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of the life insurance benefit. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent divorce. A final divorce decree shall terminate the beneficiary status of an ex-spouse, unless subsequent to divorce the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.

(3) Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.

(4)~~[(2)]~~ Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.

Section 24. KRS 161.680 is amended to read as follows:

If any change or error in a record results in any ***individual***~~[employee or beneficiary]~~ receiving from the retirement system more or less than ***the individual***~~[he]~~ was entitled to receive, the board of trustees shall, when the error is discovered, correct the error, and as far as practicable adjust the payments so that the actuarial equivalent of the benefit to which ***the individual***~~[he]~~ was entitled shall be paid.

Section 25. KRS 161.568 is amended to read as follows:

(1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an~~[irrevocable]~~ election to participate in the optional retirement plan within thirty

(30) days after their employment date. ***This election shall be irrevocable except as otherwise provided in this subsection.*** No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. ***Any person who previously elected to participate in the optional retirement plan may irrevocably elect one (1) time during his or her lifetime to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System. This election to change from the optional retirement plan to Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the system.*** These elections shall be made in writing and filed with the appropriate officer of the employer institution.

(2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, he shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

Section 26. KRS 161.569 is amended to read as follows:

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as he is employed in a position for which the optional retirement plan is available***, except as provided in subsection (1) of Section 25 of this Act***.

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(5) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

1. To the designated company or companies, an amount equal to the amount that would have been payable to the Kentucky Teachers' Retirement System if the member had elected to participate in that plan instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System pursuant to subparagraph 2. of this paragraph; and

2. To the Kentucky Teachers' Retirement System, an amount equal to the contribution which would have been payable to the Kentucky Teachers' Retirement System on account of the unfunded liability if the member had elected to participate in that plan instead of the optional retirement plan. The rate of contribution shall be determined annually by the Kentucky Teachers' Retirement System actuary. This payment shall continue to be made on behalf of all participants in the optional retirement plan until July 1, 2018, the current amortization period of the Kentucky Teachers' Retirement System.

(b) Each participant shall contribute an amount equal to the present member contribution to the Kentucky Teachers' Retirement System. Employee contributions to the optional retirement plan shall be made by salary reduction under either Section 403(b) or 414(h) of the Internal Revenue Code of 1986.

Section 27. The provisions of subsection (8) of Section 16 of this Act supercede the provisions relating to critical shortage positions set forth in 2003 Kentucky Acts ch. 156, sec. 1.

Section 28. Whereas retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and this Act takes effect July 1, 2004.

Approved April 9, 2004

CHAPTER 122

(SB 45)

AN ACT relating to wages and hours.

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

Section 1. KRS 337.285 is amended to read as follows:

(1) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.

(2) This provision ***shall***~~[does]~~ not apply to ***the following:***

(a) Employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities***;***

(b) ~~[or to]~~Employees of restaurant, hotel, and motel operations***;***

(c) ~~[, to]~~Employees as defined and exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and 213(b)(17) of Title 29, U.S.C.***;***

(d) ~~[, or to]~~Employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private nonprofit childcaring facilities licensed by the Cabinet for Health Services under KRS 199.640 to 199.670***; or***

(e) Any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person.

(3) As used in subsection (2) of this section, "companionship services" means those services which provide in-home fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. These services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that the household work is incidental, i.e., does not exceed twenty percent (20%) of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.

(4)~~[(2)]~~ Notwithstanding the provisions of subsection (1) of this section or any other chapter of the KRS to the contrary, upon written request by a county employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county employee before the performance of the work, a county employee who is authorized to work one (1) or more hours in excess of the prescribed hours per week may be granted compensatory leave on an hour-for-hour basis. Upon the written request by a county employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county employee before the performance of the work, a county employee who is not exempt from the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. et seq., may be granted compensatory time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2) hours for each hour the county employee is authorized to work in excess of forty (40) hours in a work week.

(5)~~[(3)]~~ (a) Upon the request of the county employee, and as provided in subsection ***(4)***~~[(2)]~~ of this section, compensatory time shall be awarded as follows:

1. A county employee who provided work in excess of forty (40) hours in a public safety activity, an emergency response activity, or a seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not more than four hundred eighty (480) hours of compensatory time; or

2. A county employee engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time.

(b) A county employee who has accrued four hundred eighty (480) hours of compensatory time off pursuant to paragraph (a)1. of this subsection, or two hundred forty (240) hours of compensatory time off pursuant to paragraph (a)2. of this subsection, shall for additional overtime hours of work, be paid overtime compensation.

(6) ~~[(4)]~~ A county employee who has accrued compensatory time off as provided in subsection ***(4)*** ~~[(2)]~~ of this section, and who requested the use of compensatory time, shall be permitted by the employer to use the compensatory time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer. Mere inconvenience to the employer shall not constitute a sufficient basis for denial of a county employee's request for compensatory time off.

(7) ~~[(5)]~~ If compensation is paid to a county employee for accrued compensatory time off, the compensation shall be paid at the regular rate earned by the county employee at the time the county employee receives the payment.

(8) ~~[(6)]~~ Upon a county employee's termination of employment, all unused accrued compensatory time shall be paid at a rate of compensation not less than:

(a) The average regular rate received by the county employee during the last three (3) years of the county employee's employment; or

(b) The final regular rate received by the county employee, whichever is higher.

(9) ~~[(7)]~~ Compensatory time shall not be used as a means to avoid statutory overtime compensation. A county employee shall have the right to use compensatory time earned and shall not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period upon the county employee making the request for compensatory time off.

(10) ~~[(8)]~~ Nothing in subsections ***(4)*** ~~[(2)]~~ to ***(9)*** ~~[(7)]~~ of this section shall be construed to supersede any collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representative of the county employees.

(11) ~~[(9)]~~ As used in subsections ***(4)*** ~~[(2)]~~ to ***(9)*** ~~[(7)]~~ of this section, "county employee" means an employee of any county, charter county, consolidated local government, or urban-county government, including an employee of a county elected official.

Section 2. KRS 337.990 is amended to read as follows:

The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

(1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.

(2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.

(4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.

(5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation.

(6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and each day that the failure continues shall be deemed a separate offense.

(7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the commissioner or his authorized representative in the performance of his duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the commissioner or his authorized representative shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). A civil penalty of not less than one thousand dollars ($1,000) shall be assessed for any subsequent violation of KRS 337.285***(4)*** ~~[(2)]~~ to ***(9)*** ~~[(7)]~~ and each day the employer violates KRS 337.285***(4)*** ~~[(2)]~~ to ***(9)*** ~~[(7)]~~ shall constitute a separate offense and penalty.

(8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his employer, to the commissioner, or to his authorized representative that he has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(12) Any contractor or subcontractor who violates any wage or work hours provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense, and the contractor or subcontractor shall make full restitution to all employees to whom he is legally indebted by reason of said violation. The prime contractor shall be jointly and severally liable with a subcontractor for wages due an employee of the subcontractor. For a flagrant or repeated violation the offending contractor or subcontractor shall be barred from bidding on, or working on, any and all public works contracts, either in his name or in the name of any other company, firm, or other entity in which he might be interested for a period of two (2) years from the date of the last offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense.

(13) Any public authority, public official, or member of a public authority who willfully fails to comply or to require compliance with KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. Each day of violation shall constitute a separate offense. If a public authority, public official or member of a public authority willfully or negligently fails to comply with KRS 337.505 to 337.550 and the failure results in damages, injury or loss to any person, the public authority, public official, or member of a public authority may be held liable in a civil action.

(14) A person shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:

(a) Made any complaint to his employer, the commissioner, or any other person; or

(b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or

(c) Testified, or is about to testify, in any such proceedings.

Approved April 9, 2004

CHAPTER 123

(SB 79)

AN ACT relating to alcoholic beverages.

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

Section 1. KRS 243.170 is amended to read as follows:

(1) A wholesaler may sell, deliver and transport distilled spirits and wine at wholesale, and from the licensed premises only, to:

(a) Other wholesalers.

(b) Retailers.

(c) A point out of the state to persons authorized by the law of the state of their residence, and by the United States government if located in the United States, to receive the distilled spirits and wine.

(2) A wholesaler may purchase distilled spirits and wine at wholesale from licensed distillers, rectifiers, vintners or other wholesalers and from nonresidents authorized by the law of the states of their residence, and by the United States government if located in the United States, to make the sales. A wholesaler may not transport distilled spirits and wine from any point to his own licensed premises, except as provided in subsection (4) of KRS 243.200.

(3) No wholesaler shall sell or contract to sell, give away or deliver any distilled spirits or wine to any person in Kentucky who is not licensed to receive, possess, distribute or sell distilled spirits and wine, and in no event shall he sell or contract to sell, give away or deliver any distilled spirits or wine to any consumer. This section does not permit sales or deliveries of distilled spirits in Kentucky by licensed wholesalers to nonresidents who are not licensed by their own states.

(4) A wholesaler may extend credit on distilled spirits and wine sold to retail licensees for a period not to exceed thirty (30) days from the date of invoice, with the date of invoice included in the total number of days. When the thirty (30) day period has passed without payment in full, no wholesaler shall sell to the licensee except for cash on delivery.

Section 2. KRS 244.230 is amended to read as follows:

(1) ***KRS 244.260 and 244.340, notwithstanding,*** the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury, as they are now or may be hereafter, with respect to the labeling ***and standards of fill*** of distilled spirits and wine ***in their original sealed packages***, are adopted and any distilled spirits and wine shall be deemed to be properly labeled under all the laws of this state, if the labels ***and standards of fill*** conform to those regulations.

(2) Distilled spirits not produced or bottled in the United States shall be labeled in the same manner that distilled spirits produced or bottled in this state are required to be labeled.

(3) Subsections (1) and (2) shall not prevent the department from promulgating regulations on this subject that are in addition to but not contrary to the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury.

Approved April 9, 2004

CHAPTER 124

(SB 115)

AN ACT relating to civil actions under the federal Individuals with Disabilities Education Act.

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

Section 1. KRS 157.224 is amended to read as follows:

(1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide special education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated, classrooms.

(2) All county and independent boards of education shall operate special education programs pursuant to an annual application which has been approved by the Kentucky Department of Education pursuant to standards set out in administrative regulations promulgated by the Kentucky Board of Education. If any county or independent board of education fails to operate and implement special education programs in accordance with the standards, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient and the add-on funds generated under that statute may be withheld by the Kentucky Board of Education until the program is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended. The add-on funds shall not be withheld until the district has had the benefit of intense assistance from the Department of Education, a Kentucky Special Education Mentor under the provisions of KRS 157.197 or other assistance approved by the department for at least two (2) years. The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with Kentucky Board of Education administrative regulations.

(3) The Kentucky Board of Education administrative regulations shall set forth the data local school districts shall submit in their annual applications and reports. The data shall be reported in the same format as data submitted to the Department of Education for all other students and shall include, but not be limited to:

(a) The number of students who are suspended, expelled, and quit school annually;

(b) The success of students placed in various classroom settings including, but not limited to, regular classrooms, resource rooms, self-contained classrooms, and vocational programs as measured by the state assessment program; and

(c) Information about students' successful transition to adult life.

(4) Local school districts and schools found to be noncompliant with state board administrative regulations shall develop an improvement plan that shall be submitted to the Department of Education for approval. Local school districts shall use specialized resources in the development of the plan which may include universities, regional resource centers, professional organizations, and constituent advocacy groups.

(5) There is hereby created a special education trust fund to receive the funds withheld under subsection (2) of this section and interest accrued from the funds invested. The funds and interest shall not lapse, but shall be returned to the district when it is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended.

(6) All administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter 13B notwithstanding, the decision of the hearing officer in hearings under this section shall be the final order and shall be rendered ***pursuant to 34 C.F.R. 300.511. A parent, public agency, or eligible student may only request the administrative hearing within three (3) years of the date the parent, public agency, or eligible student knew about the alleged action that forms the basis for the complaint, unless a longer period is reasonable because the violation is continuing. This three (3) year limit shall not limit the introduction of evidence older than three (3) years if the evidence is relevant to the complaint and shall not apply to the parent or the eligible student if the parent or eligible student was prevented from requesting the hearing due to:***

(a) Failure of the local educational agency to provide prior written or procedural safeguards notices;

(b) False representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

(c) The local educational agency's withholding of information relevant to the hearing issues from the parent~~[within the time limit specified in 34 C.F.R. 300.512(a)]~~.

Approved April 9, 2004

CHAPTER 125

(SB 171)

AN ACT relating to reinsurance.

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

Section 1. KRS 304.5-140 is amended to read as follows:

(1) (a) For the purposes of subsection (3)(c) of this section, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(2) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraphs (a), (b), (c), (d), or (e) of this subsection. If meeting the requirements of paragraphs (c) or (d) of this subsection, the requirements of paragraph (f) of this subsection shall also be met.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized to transact insurance or reinsurance in Kentucky.

(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:

1. Files with the commissioner evidence of its submission to Kentucky's jurisdiction;

2. Submits to Kentucky's authority to examine its books and records;

3. Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

4. Files annually with the commissioner a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement, and either:

a. Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars ($20,000,000) and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

b. Maintains a surplus as regards policyholders in an amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the commissioner.

5. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien insurer:

1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

2. Submits to the authority of the commissioner to examine its books and records.

However, subparagraph 1. of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States; and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, the incorporated members of which group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary insurance regulatory official and its independent public accountants.

2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph 1. of this paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the commissioner's authority to examine its books and records and bears the expense of the estimation, and which has aggregate policyholders' surplus of ten billion dollars ($10,000,000,000), the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.

3. The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

4. No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (a), (b), (c), or (d) of this subsection, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the commissioner.

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and

2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(3) A reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsection (2) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance, or confirmation, shall, notwithstanding the issuing, or confirming, institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(4) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.

(5) ***(a)*** Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsections (2), (3), or (4) of this section, except that no such credit shall be allowed unless the reinsurance ***contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be*** ~~[is]~~ payable ***under a contract reinsured*** by the assuming insurer on the basis of ***reported claims allowed by the liquidation court,*** ~~[the liability of the ceding insurer under the contracts reinsured]~~ without diminution because of the insolvency of the ceding insurer. ***Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:***

1. Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

2. Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(b) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(6) Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(7) Subsections (1) to (3) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.

Section 2. KRS 304.33-330 is amended to read as follows:

(1) Set-offs allowed in general. Mutual debt or mutual credits between the insurer and another person in connection with any action or proceeding under this subtitle shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) Exceptions. No set-off or counterclaim shall be allowed in favor of any person where:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle him to share as a claimant in the assets of the insurer;

(b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a set-off;

(c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(d) The obligation of the person is to pay earned premiums to the insurer. However, ***the provisions of this paragraph shall only apply to reinsurance contracts entered into prior to the effective date of this Act***~~[nothing in this subsection shall restrict the right of a person to set off premium due to or from the insurer pursuant to a reinsurance contract in any delinquency proceeding commenced against an insurer after July 15, 1996]~~.

Section 3. KRS 304.33-350 is amended to read as follows:

The amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings ***unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator, except:***

(1) Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

(2) Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees~~[, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of an individual named insured and the payment was made in discharge of that obligation]~~.

Section 4. KRS 304.33-380 is amended to read as follows:

(1) Claims contingent on judgments. The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) Claims under terminated policies. Any claim that would have become absolute if there had been no termination of coverage under KRS 304.33-120, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten (10) days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to him as prescribed by subsection (1) of KRS 304.33-250, or subsection (1) of KRS 304.33-260. If allowed, the claim shall share in distributions under subsection (9) of KRS 304.33-430.

(3) Other contingent claims. A claim may be allowed even if contingent, if it is filed in accordance with subsection (2) of KRS 304.33-360. It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.

(4) Immature claims. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

(5) (a) Nothing in this section or any other section in this subtitle shall be construed as authorizing the receiver, or any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not reported losses or outstanding reserves.

(b) Notwithstanding the provisions of this section or any other section of this subtitle to the contrary, the liquidator may negotiate a voluntary commutation and release of all obligations arising from reinsurance contracts or other agreements.

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

(1) An authorized insurer may reinsure its risks, or any part of its risks, in any insurer authorized to do business in this state, in any other state of the United States, or in the District of Columbia, or in any alien insurer.

(2) An authorized insurer may reinsure an insurer eligible for export pursuant to Subtitle 10 of KRS Chapter 304, in whole or in part, as to property and casualty insurance policies which principally contemplate performance in Kentucky or as to such policies the principal subjects of risk of which are located in Kentucky.

(3) The provisions of this section shall apply to reinsurance agreements which have had an inception, anniversary, or renewal date on or after January 1, 2005.

Approved April 9, 2004

CHAPTER 126

(SB 206)

AN ACT relating to relating to health practitioners.

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

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

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

(1) "Advisory Committee for Surgical Assistants" means the advisory committee created in Section 3 of this Act;

(2) "Board" means the Kentucky Board of Medical Licensure;

(3) "Delegating physician" means a physician who is licensed by the board as either a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine and who assumes responsibility for the services rendered by a surgical assistant;

(4) "Direct supervision" means supervision by a delegating physician who is physically present and who personally directs delegated acts and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care and has been transferred to the care and responsibility of another physician;

(5) "President" means the president of the board; and

(6) "Surgical assisting" means providing aid under direct supervision in exposure, hemostasis, closures, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient.

SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) A person is not required to hold a certificate under Sections 1 to 14 of this Act if the person is:

(a) A student enrolled in a surgical assistant education program approved by the board who is assisting in a surgical operation that is an integral part of the program of study;

(b) A surgical assistant employed in the service of the federal government while performing surgical assisting duties related to that employment;

(c) A health care worker, licensed or certified within this Commonwealth, acting within the scope of the person's license;

(d) A registered nurse or licensed practical nurse;

(e) A certified physician assistant; or

(f) An individual employed by a hospital who is performing the duties of a surgical assistant under the direct supervision of a registered nurse.

(2) Except as provided in subsection (1) of this section, a person shall not practice as a surgical assistant unless the person is certified under Sections 1 to 14 of this Act and shall not use the title "Kentucky Certified Surgical Assistant" or any other designation that would imply that the person is a certified surgical assistant.

SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The Advisory Committee for Surgical Assistants shall be a committee of six (6) members appointed by the board and whose duties shall be delegated by the board. Duties shall include those cited in Section 7 of this Act. The members of the committee shall be:

(a) Three (3) practicing surgical assistants who have at least five (5) years of clinical experience as surgical assistants;

(b) Two (2) physicians licensed in the Commonwealth who supervise surgical assistants; and

(c) One (1) registered perioperative nurse with at least five (5) years of clinical experience as a perioperative nurse.

(2) Members of the committee are appointed for two (2) year terms and may not serve more than two (2) consecutive full terms. The board may determine the rotation of the membership.

(3) The president shall designate biennially a committee member to be the presiding officer to serve at the will of the president.

(4) Members shall not be entitled to per diem, travel, or other expenses and shall have no authority to determine policy independent of the board.

(5) Meetings shall be held quarterly and may be held on-line or by telephone conference call.

(6) Vacancies shall be filled with appointees selected by the president.

(7) A person may not be a member of the committee if:

(a) The person is an officer, employee, or paid consultant of a Kentucky trade association in the field of surgical assisting;

(b) The person's spouse is an officer, manager, or paid consultant of a Kentucky trade association in the field of surgical assisting;

(c) The person is a registered lobbyist for compensation on behalf of a profession related to the field of surgical assisting; or

(d) The person is presently subject to a disciplinary order issued by their licensing or certifying body.

SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board, with any committee assistance requested by the board, may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement the provisions of Sections 1 to 14 of this Act as follows:

(a) Establish qualifications for a surgical assistant to practice in this state;

(b) Establish requirements for an examination and develop an application to certify a surgical assistant to practice;

(c) Establish minimum education and training requirements necessary for a certificate to practice as a surgical assistant;

(d) Develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded;

(e) Accept the continuing education rules and guidelines of the Association of Surgical Technologists or other national association of surgical assisting that develops continuing education guidelines;

(f) Establish reasonable and necessary fees for the application, examination, initial certificate, renewal certificate, and other fees necessary to implement Sections 1 to 14 of this Act; and

(g) Identify the surgical assistant's scope of practice citing appropriate medical tasks, and define the delegating physician's oversight responsibilities.

(2) The board shall maintain a record for each certificate holder that contains information determined by the board. Any certificate holder who, after notifying the board of his or her official address or addresses, moves his or her practice location to a new address shall immediately notify the board of the change.

SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The board shall prepare information of public interest describing the functions of the board that shall include procedures by which grievances are filed and resolved. The board shall make the information available on request to the public and appropriate state agencies.

SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

All investigations and disciplinary procedures against a surgical assistant shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, 311.599, and Chapter 13B.

SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) A surgical assistant, a physician practicing medicine in this state, or any person usually present in an operating room, including a nurse or surgical technologist, shall report relevant information to the advisory committee related to the acts of a certified surgical assistant in this state if, in that person's opinion, a surgical assistant has violated one or more provisions of Section 14 of this Act or poses a continuing threat to the public welfare through practice as a surgical assistant.

(2) A person who furnishes records, information, or assistance to the advisory committee under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a surgical assistant who is reported under this section.

SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) An applicant for a certificate shall file a written application with the board on a form prescribed by the board and shall pay the application fee set by the board.

(2) To be eligible for a certificate a person shall:

(a) Hold and maintain certification by one (1) of the following:

1. The National Surgical Assistant Association; or

2. The Liaison Council on Certification for the Surgical Technologist;

(b) Document one (1) of the following:

1. Graduation from a program approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

2. Graduation from a United States Military program that emphasizes surgical assisting; and

(c) Demonstrate to the satisfaction of the board the completion of full-time work experience performed in this country under the direct supervision of a physician licensed in this country and consisting of at least eight hundred (800) hours of performance as an assistant in surgical procedures for the three (3) years preceding the date of the application.

SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The board may grant a certificate to any person who is licensed, certified, or registered and in good standing in another state that has standards at least as stringent as those required in Section 8 of this Act. Applicants who are not from a state that has standards at least as stringent as those required in Section 8 of this Act may request a waiver under Section 8 of this Act on the grounds that their experience and education meet the criteria equivalent to the requirements of Section 8 of this Act.

SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Before July 1, 2005, the board may issue a certificate as a surgical assistant to an applicant who:

(1) Meets the requirements set forth in subsection (2) of Section 8 of this Act; and

(2) Provides documentation that the applicant has passed a surgical or first assistant examination required for certification by one (1) of the following:

(a) The National Surgical Assistant Association;

(b) The Liaison Council on Certification for the Surgical Technologist; or

(c) The American Board of Surgical Assistants.

SECTION 11. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Fees received by the board under the provisions of Sections 1 to 14 of this Act shall be deposited in the State Treasury to the credit of a trust and agency fund and may be appropriated by the General Assembly for the use of the board in defraying the cost of administering the provisions of Sections 1 to 14 of this Act. No part of this fund shall revert to the general fund of this Commonwealth.

SECTION 12. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board shall provide for the annual renewal of a surgical assistant certificate.

(2) At least thirty (30) days before the expiration of a person's certificate, the board shall send written notice of the impending certificate expiration to the person at the certificate holder's last known address according to the records of the board.

(3) If the person's certificate has been expired for ninety (90) days or less, the person may renew the certificate by paying the board one and one-half (1-1/2) times the required renewal fee. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.

(4) If the person's certificate has been expired for longer than ninety (90) days but less than one (1) year, the person may renew the certificate by paying the board two (2) times the required renewal fee. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.

(5) If the person's certificate has been expired for one (1) year or longer, the person may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures for obtaining an original certificate.

(6) If the person was certified as a surgical assistant in this state, moved to another state, and is currently licensed or certified as a surgical assistant and has been in practice as a surgical assistant in the other state for the two (2) years preceding application, the person may renew an expired surgical assistant certificate without reexamination. The person shall pay the board a fee that is equal to two (2) times the required renewal fee for the license. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.

SECTION 13. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) Sections 1 to 14 of this Act do not authorize a person who holds a certificate under Sections 1 to 14 of this Act to engage in the practice of medicine, as defined in KRS 311.530 to 311.620 or the practice of registered nursing as defined in KRS 314.011 to 314.161.

(2) A health maintenance organization, preferred provider organization, or health benefit plan may not require a registered nurse or certified physician assistant to be certified as a surgical assistant as a condition for reimbursement.

SECTION 14. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) The board may revoke, suspend, deny, decline to renew, limit, or restrict the certification of a surgical assistant, or may fine, reprimand, or place a surgical assistant on probation for no more than five (5) years upon proof that he or she:

(a) Has been convicted of a felony;

(b) Has been convicted of a misdemeanor involving moral turpitude or conduct likely to deceive or defraud the public;

(c) Has been granted a certificate upon a mistake of a material fact;

(d) Has violated any provision of Sections 1 to 14 of this Act;

(e) Has become drug addicted;

(f) Has become a chronic or persistent alcoholic;

(g) Has developed such physical or mental disability, or other condition whereby continued practice is dangerous to patients or to the public;

(h) Has violated any order or the terms or the conditions of any order issued by the board;

(i) Has engaged in, or attempted to engage in, practice as a surgical assistant under a false or assumed name;

(j) Has willfully violated a confidential communication;

(k) Has acted in a grossly negligent or willful manner which is inconsistent with practice as a surgical assistant;

(l) Is unfit or incompetent to practice as a surgical assistant by reason of gross negligence or other causes, including but not limited to being unable to practice as a surgical assistant with reasonable skill or safety;

(m) Has had a license or certificate to practice as a surgical assistant denied, limited, suspended, probated, or revoked in another jurisdiction;

(n) Has engaged in conduct likely to deceive or defraud the public;

(o) Has knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for certification;

(p) Has exceeded the scope of practice of surgical assisting delegated by the delegating physician; or

(q) Has exceeded the scope of practice for which the surgical assistant was credentialed by the governing board of a hospital or licensed health care facility.

(2) The board may impose a fine of up to five hundred dollars ($500) per violation as part of a disciplinary action and may require the surgical assistant to reimburse the board for all costs of the proceedings.

Section 15. KRS 327.040 is amended to read as follows:

(1) It shall be the duty of the State Board of Physical Therapy to receive applications from persons desiring to become physical therapists and to determine whether said applicants meet the qualifications and standards required by this chapter of all physical therapists. The board shall also be charged with enforcement of the provisions of this chapter.

(2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter coming to its notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.

(3) The board shall meet at least once each quarter at such place in this state as may be selected by the board. Four (4) members of the board shall constitute a quorum for the transaction of business. All meetings shall be held at the call of the chairman or at a call of a quorum of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.

(4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B, to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.

(5) The board shall keep a minute book containing a record of all meetings of the board.

(6) The board shall maintain a register of all persons licensed or certified under this chapter. This register shall show the name of every licensee or certificate holder in this state, his current business and residence address and telephone numbers, and the date and number of his license or certificate. A licensee or certificate holder shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.

(7) The board's records shall be updated annually.

(8) The board shall publish annually and make available, a current directory of all licensed physical therapists and certified physical therapists' assistants.

(9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.

(10) ***The board may promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal.***

(11) The board may promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of this chapter pursuant to the provisions of KRS Chapter 13A.

(12) ~~[(11)]~~ The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.

(13) ~~[(12)]~~ The board shall have the right to regulate physical therapists' assistants and may promulgate reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapists' assistants. The board may establish reasonable fees for the certification, renewal, and endorsement of physical therapists' assistants. The fees shall not exceed corresponding fees for physical therapists.

(14) ~~[(13)]~~ The board shall promulgate administrative regulations governing the physical and mental examination of physical therapists, physical therapists' assistants, or applicants, who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a physical therapist, physical therapist's assistant, or

applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.

Approved April 9, 2004

CHAPTER 127

(SB 219)

AN ACT relating to federally funded time-limited state employees.

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

Section 1. KRS 18A.005 is amended to read as follows:

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

(1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;

(2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;

(3) "Board" means the Personnel Board created by KRS 18A.045;

(4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;

(5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;

(6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;

(7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;

(8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;

(9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;

(10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;

(11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;

(12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;

(13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;

(14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;

(15) ***"Federally funded time-limited employee" means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of Section 2 of this Act, shall serve at***

the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(15)(a) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(15)(a) and 18A.140;

(16) "Federally funded position" means a full-time or a part-time position in which the unclassified employee is eligible for benefits at the same level as a classified employee in a permanent position;

(17) "Full-time employee" means an employee in a full-time position;

(18) ~~[(16)]~~ "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:

(a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and

(b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;

(19) ~~[(17)]~~ "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence;

(20) ~~[(18)]~~ "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;

(21) ~~[(19)]~~ "Interim position" means a position established to address a one-time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;

(22) ~~[(20)]~~ "Part-time employee" means an employee in a part-time position;

(23) ~~[(21)]~~ "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;

(24) ~~[(22)]~~ "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;

(25) ~~[(23)]~~ "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;

(26) ~~[(24)]~~ "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;

(27) ~~[(25)]~~ "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;

(28) ~~[(26)]~~ "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;

(29) ~~[(27)]~~ "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;

(30) ~~[(28)]~~ "Reemployment" shall mean the rehiring of an employee with status who has been laid off;

(31) ~~[(29)]~~ "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;

(32) ~~[(30)]~~ "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;

(33) ~~[(31)]~~ "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;

(34) ~~[(32)]~~ "Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(13);

(35) ~~[(33)]~~ "Seniority" means the total number of months of state service;

(36) ~~[(34)]~~ "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service; ***and***

(37) ~~[(35)]~~ "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 2. KRS 18A.113 is amended to read as follows:

(1) It shall be unlawful to coerce employees who may be or who are subject to layoff to resign or retire in lieu of layoff. Dismissals shall comply with statutes relating thereto, and layoffs shall not be utilized as a method of dismissal.

(2) In the same cabinet, county, and job classification, ***federally funded time-limited,*** interim and probationary employees shall be laid off before full-time or part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.

(3) If two (2) or more employees subject to layoff in a lay-off plan submitted to the secretary have the same qualifications, the employee with the lesser seniority shall be laid off first.

(4) An employee who is laid off shall be placed on a reemployment register for the class of position from which he was laid off and for any class for which he is qualified. He shall have the right to test for any class of position for which he is qualified to take an examination. If he passes the examination, he shall be placed on the register for the class.

(5) For a period of five (5) years, laid-off employees shall be hired before any applicant or eligible except another laid-off employee with greater seniority who is already on such register.

(6) For a period of five (5) years, a laid-off employee shall not be removed from any register unless:

(a) He notifies the cabinet in writing that he no longer desires consideration for a position on such register;

(b) He declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county, as the position from which he was laid off;

(c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) He is unqualified for appointment;

(e) He is unable to perform the duties of the class;

(f) He has made a false statement of a material fact in his application;

(g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the register;

(h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;

(i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;

(j) He cannot be located by postal authorities at the last address provided by him; or

(k) He has otherwise willfully violated the provisions of this chapter.

(7) When the cabinet is notified by an appointing authority that a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same as or less than that of the class to which he has been appointed.

(8) When a laid-off employee is removed from a register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of KRS 18A.095.

Section 3. KRS 18A.115 is amended to read as follows:

(1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:

(a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;

(b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;

(c) Members of boards and commissions;

(d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;

(e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;

(f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;

(g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;

(h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;

(i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;

(j) Physicians employed as such;

(k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;

(l) The judicial department, referees, receivers, jurors, and notaries public;

(m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;

(n) Patients or inmates employed in state institutions;

(o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;

(p) Interim employees;

(q) Officers and members of the state militia;

(r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;

(s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;

(t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);

(u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;

(v) County and Commonwealth's attorneys and their respective appointees;

(w) Chief district engineers and the state highway engineer;

(x) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;

(y) Employees of the Kentucky Peace Corps;

(z) Employees of the Council on Postsecondary Education;

(aa) Chief information officer of the Commonwealth;~~[and]~~

(ab) Employees of the Kentucky Commission on Community Volunteerism and Service***; and***

(ac) Federally funded time-limited employees as defined in Section 1 of this Act.

(2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.

(3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.

(4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.

(5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.

(6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the

employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

(7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.

(8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

Section 4. KRS 278.050 is amended to read as follows:

(1) The Public Service Commission shall consist of three (3) members appointed by the Governor with the advice and consent of the Senate. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Appointments to the Public Service Commission made more than ninety (90) days prior to a regular session of the General Assembly shall be subject to confirmation by the Joint Interim Committee on Energy. Each of the three (3) members of the commission shall be appointed on or before the first day of July, 1982, for staggered terms as follows: one (1) shall serve until the first day of July, 1983, one (1) until the first day of July, 1984, and one (1) until the first day of July, 1985, and thereafter for a term of four (4) years and until a successor is appointed and qualified. Each member of the commission shall be a full-time employee as defined in KRS 18A.005***(17)*** ~~[(15)]~~.

(2) The Governor shall appoint one (1) of the commissioners on the commission to act as chairman thereof and the chairman shall be the chief executive officer of the commission. The Governor shall designate one (1) of the commissioners on the commission to serve as vice chairman thereof and act for the chairman in the latter's absence.

(3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.

Section 5. Employment in a federally funded position, as defined in subsection (16) of Section 1 of this Act, shall not exceed the original grant period or any renewal thereof. A copy of the relevant section or sections of the federal grant which relate to the establishment of a time frame for the position shall become part of the employee's personnel file and shall be reported and justified to the State Personnel Board.

Approved April 9, 2004

CHAPTER 128

(SB 245)

AN ACT proposing an amendment of the Constitution of Kentucky by creating a Section 233A relating to marriage.

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

SECTION 1. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO BE NUMBERED 233A AND TO READ AS FOLLOWS:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The question to be presented to the voters shall read as follows: "Are you in favor of amending the Kentucky Constitution to provide that only a marriage between one man and one woman shall be a marriage in Kentucky, and that a legal status identical to or similar to marriage for unmarried individuals shall not be valid or recognized?"

Governor's signature not required

CHAPTER 129

(HB 262)

AN ACT relating to accessible electronic information for the disabled, and making an appropriation therefor.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 163 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

(1) Approximately eight hundred seventy-four thousand (874,000) Kentuckians have disabilities and, of this number, approximately three hundred thousand (300,000) are blind or visually impaired or have other print impairments that prevent them from using conventional print material;

(2) Kentucky fulfills an important responsibility by providing books and magazines prepared in Braille, audio, and large-type formats to eligible blind and disabled persons;

(3) The technology, transcription methods, and means of distribution used for these materials are labor-intensive and cannot support rapid dissemination to individuals in rural and urban areas throughout the state;

(4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational, employment, and independent opportunities, literacy, and full participation in society by blind and disabled persons;

(5) This limitation can be overcome through the use of high-speed computer, radio, and telecommunications technology, combined with customized software, providing a practical cost-effective way to convert electronic text-based information into human or synthetic speech suitable for statewide distribution and accessible through radio, a touch-tone telephone, and modern telecommunications technology;

(6) Radio, telecommunications, and voice-based information systems are cost-efficient information delivery systems for this state;

(7) Federal funds have been used to develop the technology and infrastructure needed for statewide toll-free access to daily newspapers and other timely information of local, state, and national interests, providing an efficient and cost-effective means of reader registration, content acquisition, and intrastate telecommunications support; and

(8) Use of this accessible electronic information service will enhance Kentucky's efforts to meet the needs of blind and disabled citizens for access to information that is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals.

SECTION 2. A NEW SECTION OF KRS CHAPTER 163 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act, unless the context requires otherwise:

(1) "Accessible electronic information service" means news and other timely information, including but not limited to magazines, newsletters, schedules, announcements, and newspapers, provided to eligible

individuals using high-speed computers, radios, and telecommunications technology for acquisition of content and rapid distribution in a form appropriate for use by those individuals; and

(2) "Blind and disabled persons" means those individuals who are eligible for library loan services through the Library of Congress and the Department for the Blind pursuant to 36 C.F.R. sec. 701.10(b).

SECTION 3. A NEW SECTION OF KRS CHAPTER 163 IS CREATED TO READ AS FOLLOWS:

(1) The Accessible Electronic Information Service Program is created and shall be provided [~~***by a nonprofit entity or entities selected]***~~ ***by the Department for the Blind*** [~~***through a state bidding process. The Department for the Blind shall administer funding to the nonprofit entity or entities for program services]***~~***. The program shall include:***

(a) Intrastate access for eligible persons to read audio editions of newspapers, magazines, newsletters, schedules, announcements, and other information using a touch-tone telephone, radio, or other technologies that produce audio editions by use of computer; and

(b) A means of program administration and reader registration on the Internet, or by mail, telephone, or any other method providing consumer access.

(2) The program shall:

(a) Provide accessible electronic information services for all eligible blind and disabled persons as defined by subsection (2) of Section 2 of this Act;

(b) Make maximum use of available state, federal, and other funds by obtaining grants or in-kind support from appropriate programs and securing access to low-cost interstate rates for telecommunications by reimbursement or otherwise.

(3) [~~***In the competitive bidding process used to select the nonprofit entity, the Department of the Blind shall consider an entity or entities that has previously provided accessible electronic information services to the blind and disabled in Kentucky, and that has the existing technological infrastructure to provide these services.***~~

~~***(4) The nonprofit entity or entities participating in the accessible electronic information services program shall submit an annual report by October 1 of each year to the Department for the Blind of all services provided. The report shall include but not be limited to:***~~

~~***(a) An accounting of funds received;***~~

~~***(b) The types and numbers of people served;***~~

~~***(c) The frequency of which services were accessed;***~~

~~***(d) Recommendations for improvement of the program; and***~~

~~***(e) The types and number of program services for the blind or visually impaired that are currently being offered in Kentucky and are incorporated in the program.***~~

~~***(5)]***~~ ***The Department for the Blind shall review new technologies and current service programs in Kentucky for the blind and visually impaired that are available to expand audio communication if the department determines that these new technologies will expand access to consumers in a cost-efficient manner. The department may implement recommendations from the Department for the Blind State Rehabilitation Council for improving the program.***

[~~***(6) The Department for the Blind shall prepare an annual report by November 1 of each year that includes the complete report received by each participating nonprofit entity or entities, and any other recommendations of the department for the improvement of the program. This report shall be submitted to the Governor and the Legislative Research Commission.***~~

~~SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:~~

~~***(1) To support the program created under Section 3 of this Act the Public Service Commission shall require all local exchange telecommunications companies to impose periodic surcharges on bills rendered to all local exchange telecommunications company customers.***~~

~~*(2) The Public Service Commission, in consultation with the Department for the Blind and the entity or entities participating in the program, shall annually determine the amount of the surcharge based on the amount of funding necessary to support the program created under Section 3 of this Act.*~~

~~*(3) The amount of the surcharge may be computed as a portion of any other surcharge required under existing law, order, or regulation, but shall not increase the surcharge by more than two cents ($0.02) per line each month.*~~

~~*(4) Local exchange telecommunications companies shall remit the amount received from the surcharge to the Department for the Blind, in accordance with a schedule determined by the Public Service Commission not to exceed the amount of contracted services as determined in the competitive bidding process.]*~~

Section ***4***~~[5]~~. This Act shall be known as the "Accessible Electronic Information Act."

Legislative Research Commission Note (5/18/2004). Material that is bracketed and struck through within this bill represents text vetoed by the Governor on April 9, 2004.

Vetoed in part, April 9, 2004. Became law April 10, 2004, without Governor's signature

CHAPTER 130

(HB 29)

AN ACT relating to personal motor vehicle insurance database.

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

SECTION 1. A NEW SECTION OF SUBTITLE 39 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context requires otherwise, "personal motor vehicle" means:

(a) A private passenger motor vehicle that is not used as a public or livery conveyance for passengers, nor rented to others; and

(b) Any other four-wheel motor vehicle that weighs six thousand (6000) pounds or less which is not used in the occupation, profession, or business of the insured.

(2) Beginning January 1, 2006, every insurance company that writes liability insurance on personal motor vehicles in Kentucky shall, between the first and fifteenth day of each month, send to the Department of Vehicle Regulation a list of the vehicle identification numbers (VIN) of each personal motor vehicle covered by liability insurance issued by the insurer as of the last day of the preceding month and the name of each personal motor vehicle insurance policyholder. The information shall be submitted either electronically or by paper copy at the option of the Department of Vehicle Regulation.

(3) In the absence of malice, fraud, or gross negligence, any insurer and any authorized employee of an insurer shall not be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall arise against the insurer or authorized employee, for submission of the information required by subsection (2) of this section, including submission of inaccurate or incomplete information.

Section 2. KRS 186A.040 is amended to read as follows:

(1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky ***pursuant to Sections 1 and 4 of this Act***. The department shall provide appropriate insurance information to the Governor's Office for Technology for inclusion in the AVIS database ***to assist in identifying uninsured motor vehicles***.

(2) ***(a)*** Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, ***or on and after January 1, 2006, if the vehicle identification number (VIN) of a personal motor vehicle does not appear in the database created by Section 1 of this Act for two (2) consecutive reporting months,*** the department shall immediately make

a determination as to the notification of the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:

1. ~~[(a)]~~ The person presents proof of insurance to the county clerk and pays the reinstatement fee required by KRS 186.180;

2. ~~[(b)]~~ The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;

3. ~~[(c)]~~ The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or

4. ~~[(d)]~~ The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.

(b) ~~[(3)]~~ The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by ***paragraph (a) of this*** subsection~~[(2) of this section]~~. The notice that the department gives to the county attorney in accordance with ***paragraph (a) of this*** subsection~~[(2) of this section]~~ shall include a certified copy of the person's driving record which shall include:

1. ~~[(a)]~~ The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and

2. ~~[(b)]~~ A dated notice that the department sent to the person requiring the person to present proof of insurance to the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with ***paragraph (a) of this*** subsection~~[(2) of this section]~~.

(c) ~~[(4)]~~ The certified copies sent by the department described in ***paragraph (b) of this*** subsection~~[(3) of this section]~~, shall be prima facie evidence of a violation of KRS 304.39-080.

(d) ~~[(5)]~~ If the insured provides proof of insurance to the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.

(3) (a) In developing the mechanism to electronically transfer information pursuant to Section 1 of this Act, the commissioner of the Department of Vehicle Regulation shall consult with the commissioner of the Department of Insurance and insurers of personal motor vehicles to adopt a standardized system of organizing, recording, and transferring the information so as to minimize insurer administrative expenses. The commissioner shall to the maximum extent possible utilize nationally recognized electronic data information systems such as those developed by the American National Standards Institute or the American Association of Motor Vehicle Administrators.

(b) Notwithstanding any other provision of law, information obtained by the department pursuant to Section 1 of this Act shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall not be disclosed, used, sold, accessed, utilized in any manner, or released by the department to any person, corporation, or state and local agency, except in response to a specific individual

request for the information authorized pursuant to the federal Driver's Privacy Protection Act, 18 U.S.C. secs. 2721 et seq. The department shall institute measures to ensure that only authorized persons are permitted to access the information for the purposes specified by this section. Persons who knowingly release or disclose information from the database created by Section 1 of this Act for a purpose other than those described as authorized by this section or to a person not entitled to receive it shall be guilty of a Class A misdemeanor for each release or disclosure.

SECTION 3. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) On and after January 1, 2006, a county clerk shall not process an application for, nor issue, a:

(a) Kentucky title and registration or renewal of registration;

(b) Replacement plate, decal, or registration certificate;

(c) Duplicate registration;

(d) Transfer of registration; or

(e) Temporary tag;

for any personal motor vehicle as defined in subsection (1) of Section 1 of this Act if AVIS does not list the vehicle identification number of the personal motor vehicle as an insured vehicle, except as provided in subsection (2) of this section.

(2) If AVIS does not list the vehicle identification number of the personal motor vehicle as an insured vehicle, the county clerk may process the application if the applicant has an insurance card that indicates the required security is currently in full force on the personal motor vehicle if the card was effective no more than forty-five (45) days before the application is submitted to the county clerk.

(3) This section shall not apply to any transactions involving Kentucky motor vehicle dealers who are licensed as required by KRS 190.030.

Section 4. KRS 304.39-085 is amended to read as follows:

(1) Every authorized insurance company shall, within one (1) calendar week following the end of its accounting month, send to the Department of Vehicle Regulation a list of all persons insured by it whose policy was terminated by either cancellation or nonrenewal during such accounting month, except those persons whose nonrenewal was at the end of a policy with a term of six (6) months or longer and who failed to make a payment for the renewal of the policy. Such list shall include a description of each vehicle insured under such terminating policy.

(2) It shall be lawful for an authorized insurance company to present the information required by subsection (1) of this section by compatible computer tape approved by the Department of Vehicle Regulation.

(3) On and after January 1, 2006, this section shall not apply to policies covering personal motor vehicles as defined in Section 1 of this Act.

Section 5. KRS 304.39-117 is amended to read as follows:

(1) Each insurer issuing an insurance contract which provides security covering a motor vehicle shall provide to the insured, in compliance with administrative regulations promulgated by the department, written proof in the form of an insurance card that the insured has in effect an insurance contract providing security in conformity with this subtitle.

(2) The owner shall keep the card in his motor vehicle as prima facie evidence***, except as provided in subsection (3) of this section,*** that the required security is currently in full force and effect, and shall show the card to a peace officer upon request.

(3) On and after January 1, 2006, as to personal motor vehicles as defined in Section 1 of this Act, the card and the database created by Section 1 of this Act shall be evidence to a peace officer who requests the card if the peace officer has access to the database through AVIS. If AVIS does not list the vehicle identification number of the personal motor vehicle as an insured vehicle, the peace officer may accept an insurance card as evidence that the required security is currently in full force and effect on the personal motor vehicle if the card was effective no more than forty-five (45) days before the date on which the peace officer requests the card.

Section 6. KRS 186.021 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, a county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration for renewal to any person who on January 1 of any year owned a motor vehicle on which state, county, city, urban-county government, school, or special taxing district ad valorem taxes are delinquent.

(2) Pursuant to KRS 134.810(4), the owner as defined in KRS 186.010(7)(a) and (c) on January 1 of any year shall be liable for taxes due on a motor vehicle. A person other than the owner of record who applies to a county clerk to transfer the registration of a motor vehicle may pay any delinquent ad valorem taxes due on the motor vehicle to facilitate the county clerk's transferring registration of the motor vehicle. The person applying shall not be required to pay delinquent ad valorem taxes due on any other motor vehicle owned by the owner of record from which he is purchasing his motor vehicle as a condition of registration.

(3) A county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration renewal for any motor vehicle that is not insured in compliance with KRS 304.39-080. Each applicant for registration renewal shall present proof of compliance to the county clerk in a manner prescribed in administrative regulations issued by the Department of Insurance. ***On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in Section 1 of this Act, proof of insurance shall be determined by the county clerk as provided in Section 3 of this Act.***

Section 7. KRS 186.180 is amended to read as follows:

(1) (a) If the owner loses his copy of a registration or transfer receipt, he may obtain a duplicate from the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and by filing an affidavit, upon a form furnished by the cabinet. The owner shall pay to the clerk a fee of three dollars ($3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.

(b) When the owner's copy of any registration or transfer receipt shows that the spaces provided thereon for noting and discharging security interests have been exhausted, the owner may apply to the county clerk who issued the receipt in order to obtain a duplicate thereof. The owner shall surrender his copy of the current receipt to the clerk and provide proof of insurance on the motor vehicle in compliance with KRS 304.39-080, before a duplicate may be issued. The owner shall pay the clerk a fee of three dollars ($3), except proof of insurance shall not be required for duplicates applied for by motor vehicle dealers as defined in KRS 190.010.

(c) Any security interest which has been discharged as shown by the records of the clerk or upon the owner's copy of the current receipt shall be omitted from the duplicate receipt to be issued by the clerk.

(2) If the owner loses a registration plate, he shall surrender his registration receipt to the county clerk from whom it was obtained and file a written statement as to the loss of the plate. Upon presenting the clerk proof of insurance on the motor vehicle in compliance with KRS 304.39-080, and upon the payment of the sum of three dollars ($3) for each plate and a fee of three dollars ($3) to the clerk for his services, the owner shall be issued another registration receipt and a plate or plates which shall bear a different number from that of the lost plate. The clerk shall retain the owner's statement and a copy of the owner's proof of insurance, and shall make a notation on the triplicate copy of the surrendered registration receipt stating the number of the registration receipt replacing it. The original copy of the surrendered receipt shall be forwarded to the cabinet. The cabinet shall forthwith cancel the registration corresponding to the number of the lost plate. The cancellation shall be reported by the cabinet to the commissioner of the Department of State Police. Any person finding a lost registration plate shall deliver it to the Transportation Cabinet or to any county clerk for forwarding it to the cabinet.

(3) If the owner moves from one (1) county into another county of the Commonwealth, he may obtain a registration plate bearing the name of the county of residence. In order to obtain a new registration plate, the owner shall surrender his current registration receipt and current registration plate to the county clerk. Upon being provided with proof of insurance on the motor vehicle in compliance with KRS 304.39-080, the clerk shall provide the owner with a new registration receipt and plate bearing the county name. The surrendered receipt and plate shall be forwarded to the Transportation Cabinet. The fee for this registration shall be five

dollars ($5) of which the clerk shall be entitled to three dollars ($3) and the cabinet shall be entitled to two dollars ($2).

(4) If the owner's registration is revoked as a result of the provisions set forth in KRS 186A.040, the owner may have his registration reinstated by the county clerk who issued the present owner's copy of the receipt by presenting the clerk proof of:

(a) Insurance on the motor vehicle in compliance with KRS 304.39-080 and by filing an affidavit upon a form furnished by the cabinet; or

(b) A valid compliance or exemption certificate in compliance with KRS 224.20-720 or issued under the authority of an air pollution control district under KRS 224.20-760.

(5) The owner of a motor vehicle that has the vehicle's registration revoked under KRS 186.290 shall pay to the clerk a fee of twenty dollars ($20), which shall be equally divided between the county clerk and the cabinet.

(6) On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in Section 1 of this Act, proof of insurance required under this section shall be determined by the county clerk as provided in Section 3 of this Act.

Section 8. KRS 186.190 is amended to read as follows:

(1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.

(2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the Department of Insurance pursuant to KRS Chapter 13A. ***On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in Section 1 of this Act, proof of insurance shall be determined by the county clerk as provided in Section 3 of this Act.***

(3) Upon delivery of the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of one dollar ($1), which shall be remitted to the Transportation Cabinet. If an affidavit is required, and available, the signatures on the affidavit shall be individually notarized before the county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of three dollars ($3) for his services.

(4) When a county clerk issues to a purchaser a transfer of registration in a county other than the one (1) in which the motor vehicle was originally registered, the clerk shall immediately forward one (1) copy of the transfer of registration to the clerk of the county of original registration.

(5) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and motor vehicle registration receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar ($1) for his services.

(6) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.

(7) The motor vehicle registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

Section 9. KRS 186A.100 is amended to read as follows:

(1) A motor vehicle dealer licensed under KRS 186.070 who sells a vehicle for use upon the highways of this state shall, unless the vehicle is bearing a license plate issued therefor in the name of the purchaser at the time it is delivered to the purchaser, equip the vehicle with a temporary tag executed in the manner prescribed below, which shall be valid for thirty (30) days from the date the vehicle is delivered to the purchaser. The cost of the

tag shall be two dollars ($2), of which the clerk shall retain one dollar ($1). A motor vehicle dealer licensed under KRS 186.070 shall apply to the county clerk of the county in which the dealer maintains his principal place of business for issuance of temporary tags. Application shall be made for such tags on forms supplied to the county clerk by the Transportation Cabinet.

(2) The county clerk of any county who receives a proper application for issuance of temporary tags shall record the number of each tag issued upon the application of the dealer for such tags, or if a group of consecutively numbered temporary tags are issued to a dealer in connection with a single application, record the beginning and ending numbers of the group on the application.

(3) The clerk shall retain, for a period of two (2) years, one (1) copy of the dealer's temporary tag application, and ensure that it reflects the numbers appearing on the tags issued with respect to such application.

(4) If the owner of a motor vehicle submits to the county clerk a properly completed application for Kentucky certificate of title and registration pursuant to KRS 186A.120, any motor vehicle required to be registered and titled in Kentucky, that is not currently registered and titled in Kentucky, may be equipped with a temporary tag, which shall be valid for thirty (30) days from the date of issuance, issued by the county clerk for the purpose of operating the vehicle in Kentucky while assembling the necessary documents in order to title and register the vehicle in Kentucky. The Transportation Cabinet may establish administrative regulations governing this section.

(5) The county clerk may issue a temporary tag to the owner of a motor vehicle that is currently registered and titled in Kentucky. A temporary tag authorized by this subsection shall be used for emergency or unusual purposes as determined by the clerk for the purpose of maintaining the owner's current registration. A temporary tag authorized by this subsection may only be issued by the county clerk and shall be valid for a period of between twenty-four (24) hours and seven (7) days, as determined is necessary by the clerk. A county clerk shall not issue a temporary tag authorized by this subsection unless the owner of the motor vehicle applying for the tag presents proof of motor vehicle insurance pursuant to KRS 304.39-080. ***On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in Section 1 of this Act, proof of insurance shall be determined by the county clerk as provided in Section 3 of this Act.*** A temporary tag issued pursuant to this subsection shall not be reissued by the county clerk for the same owner and same motor vehicle within one (1) year of issuance of a temporary tag.

Approved April 22, 2004

CHAPTER 131

(HB 71)

AN ACT relating to handicapped parking.

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

Section 1. KRS 189.456 is amended to read as follows:

(1) On the application of any person who has a severe visual, audio, or physical impairment, including partial paralysis, lower limb amputation, chronic heart condition, emphysema, arthritis, rheumatism, or other debilitating condition which limits or impairs one's personal mobility or ability to walk, the county clerk in the county of the person's residence shall issue the person with a disability an accessible parking placard. In addition, any agency or organization which transports persons with a disability as a part of the service provided by that agency or organization shall receive an accessible parking placard upon application to the county clerk for each vehicle used in the transportation of persons with a disability. The accessible parking placard issued shall be a two (2) sided hanger style placard and shall on each side bear the international symbol of access adopted by Rehabilitation International in 1969, the date of expiration of the placard, a seal or other identification of the Kentucky Transportation Cabinet, and shall contain the accessible parking placard identification number and other information the Transportation Cabinet may by regulation require. The international symbol of access shall be at least three (3) inches in height, be centered on the placard and in a white color on a blue shield.

(2) The fee payable to the county clerk for an accessible parking placard shall be eight dollars ($8.00) for each placard and the placard shall be valid for a period of ***two (2)***~~[six (6)]~~ years ***which may be twice renewed for a***

period of two (2) years, without any additional fee being charged to the applicant. The application shall be made on a form prepared by the Transportation Cabinet. Placards shall be printed at cabinet expense and distributed to the county clerk of each county who shall keep a record of applications filed and placards issued.

(3) For every person seeking an accessible parking placard, proof of the disability shall be required by:

(a) Evidence that the individual has a license plate for a person with a disability as provided by KRS 186.041 or 186.042;

(b) The county clerk issuing the permit ascertaining that the applicant is obviously disabled; or

(c) A statement from a licensed physician that the applicant is a person whose mobility, flexibility, coordination, respiration, or perceptiveness is significantly reduced by a permanent disability to that person's arms, legs, lungs, heart, ears, or eyes.

(4) For every agency or organization seeking an accessible parking placard for a person with a disability, application for the placard shall include:

(a) Name of the agency or organization requesting use of an accessible parking placard;

(b) Number of vehicles being used in the transportation of persons with a disability; and

(c) A statement from the director of the agency or organization verifying the need for the parking placard.

(5) The accessible parking placard shall, when the vehicle is parked in a parking space identified as accessible to a person with a disability, be displayed so that it may be viewed from the front and rear of the vehicle by hanging the placard from the front windshield rear view mirror. When there is no rear view mirror, the placard shall be displayed on the dashboard.

(6) A person who has not been issued a license plate for a person with a disability under the provisions of KRS 186.041 or 186.042 may be issued a second parking placard for a fee of four dollars ($4).

(7) A person with a disability who has been issued a parking placard pursuant to this section may make application for a replacement placard by swearing in an affidavit that the original placard has been lost, stolen, or destroyed. The fee for the replacement placard shall be two dollars ($2).

(8) The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement or administer this section.

Section 2. KRS 189.458 is amended to read as follows:

(1) Upon application of any person who has a severe temporary visual, audio, or physical impairment, including partial paralysis, heart condition, emphysema, arthritis, rheumatism, or other debilitating condition which limits or impairs one's personal mobility or ability to walk as defined in KRS 186.042, the county clerk in the county of the person's residence shall issue the person with a disability a temporary accessible parking placard.

(2) The accessible parking placard issued shall be a two (2) sided hanger style placard and shall on each side bear the international symbol of access adopted by Rehabilitation International in 1969, the date of expiration of the placard, a seal or other identification of the Kentucky Transportation Cabinet, and shall contain the accessible parking placard identification number and other information the Transportation Cabinet may by administrative regulation require. The international symbol of access shall be at least three (3) inches in height, be centered on the placard and in a white color on a red shield.

(3) The fee payable to the county clerk for a temporary accessible parking placard shall be two dollars ($2) for each placard and the placard shall be valid for a period of ***not more than three (3) months***~~[no more than six (6) months. The placard may be renewed for an additional six (6) months for a two dollar ($2) renewal fee]~~.

(4) The application shall be made on a form prepared by the Transportation Cabinet. Placards shall be printed at cabinet expense and distributed to the county clerk of each county who shall keep a record of applications filed and placards issued.

(5) For every person seeking a temporary accessible parking placard, proof of the disability shall be required by a statement from a licensed physician that the applicant is a person whose mobility, flexibility, coordination, respiration, or perceptiveness is significantly reduced by a temporary disability to that person's arms, legs, lungs, heart, ears, or eyes.

(6) The temporary accessible parking placard, when the vehicle is parked in a parking space designated as accessible to and for the use of a person with a disability, shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rear view mirror. When there is no rear view mirror, the placard shall be displayed on the dashboard.

(7) The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement or administer this section.

Section 3. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, ***KRS 189.450 to 189.458, KRS 189.4595 to 189.480***~~[189.450 to 189.480]~~, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents ($0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars ($100) and shall not be more than five hundred dollars ($500).

(b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars ($100); otherwise, the penalties in paragraph (a) of this subsection shall apply.

(c) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less

than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

(28) A person who violates the provisions of subsection (2) or (3) of KRS 189.459 shall be fined two hundred fifty dollars ($250). The fines and costs for a violation of subsection (2) or (3) of KRS 189.459 shall be collected and disposed of in accordance with KRS 24A.180. Once deposited into the State Treasury, ninety percent (90%) of the fine collected under this subsection shall immediately be forwarded to the personal care assistance program under KRS 205.900 to 205.920. Ten percent (10%) of the fine collected under this subsection shall annually be returned to the county where the violation occurred and distributed equally to all law enforcement agencies within the county.

Approved April 22, 2004

CHAPTER 132

(HB 90)

AN ACT relating to health services and declaring an emergency.

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

Section 1. KRS 216B.450 is amended to read as follows:

As used in this section and KRS 216B.455:

(1) "Cabinet" means the Cabinet for Health Services;

(2) "Community-based" means a facility that is located in an existing residential neighborhood or community;

(3) ***"Freestanding" means a completely detached building or two (2) residences under one (1) roof that are clearly separate and can serve youth independently.***

(4) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregate meals, and family-type routines appropriate to the ages and levels of functioning of the residents; and

(5)~~[(4)]~~ "Psychiatric residential treatment facility" means a licensed, community-based, and home-like facility with a maximum of ***nine (9)***~~[eight (8)]~~ beds which provides inpatient psychiatric residential treatment to residents ***age six (6) to twenty-one (21) years*** who have an emotional disability or severe emotional disability as defined in KRS 200.503,~~[age six (6) years to twenty one (21) years]~~ with an age range of no greater than five (5) years ***at the time of admission*** in a living unit.

Section 2. KRS 216B.455 is amended to read as follows:

(1) A certificate of need shall be required for all psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:

(a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;

(b) Department for Community Based Services;

(c) Local school districts;

(d) ***At least one (1)*** psychiatric ***hospital***~~[hospitals]~~; and

(e) Any other agency, organization, or facility deemed appropriate by the cabinet.

(2) ***Notwithstanding provisions for granting of a nonsubstantive review of a certificate of need application under KRS 216B.095, the cabinet shall review and approve the nonsubstantive review of an application seeking to increase the number of beds as permitted by Section 1 of this Act if the application is submitted by an eight (8) bed or sixteen (16) bed psychiatric residential treatment facility licensed and operating on the effective date of this Act. The cabinet shall base its approval of expanded beds upon the psychiatric residential treatment facility's ability to meet standards designed by the cabinet to provide stability of care. The standards shall be promulgated by the cabinet in an administrative regulation in accordance with KRS Chapter 13A. An application under this subsection shall not be subject to any moratorium relating to certificate of need.***

(3) All psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.

(4)~~[(3)]~~ All psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state.

(5)~~[(4)]~~ A psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital. ***More than one (1) freestanding psychiatric residential treatment facility may be located on the same campus that is not in or on the grounds of a psychiatric hospital.***

(6)~~[(5)]~~ The total number of psychiatric residential treatment facility beds shall not exceed ***three hundred and fifteen (315) beds statewide, and shall be distributed among the state mental hospital districts established by administrative regulations promulgated by the Cabinet for Health Services under KRS 210.300 as follows:***

(a) District I for seventy-two (72) beds;

(b) District II for ninety-nine (99) beds;

(c) District III for ninety (90) beds; and

(d) District IV for fifty-four (54) beds~~[sixteen (16) beds in any area development district with less than 275,000 population; thirty-two (32) beds in any area development district with 275,000 to 550,000 population; and forty-eight (48) beds in any area development district with over 550,000 population]~~.

(7) (a) The Cabinet for Health Services and the Cabinet for Families and Children shall investigate the need for children's psychiatric residential treatment services for specialized populations including, but not limited to, sexual offenders, children with physical and developmental disabilities, and children with dual diagnoses.

(b) The cabinets shall report to the Governor and the Legislative Research Commission by August 1, 2005, on a plan to enable children with specialized needs to be served in community-based psychiatric treatment facilities in Kentucky. The plan shall include methods to:

1. Identify the specialized populations;

2. Develop services targeted for the specialized populations; and

3. Establish a Medicaid reimbursement rate for specialized facilities in Kentucky.

Section 3. KRS 216B.459 is amended to read as follows:

The rate of reimbursement for Medicaid eligibles residing in ***nine (9)***~~[eight (8)]~~ bed psychiatric residential treatment facilities shall not exceed the rate of reimbursement for Medicaid eligibles residing in ***eighteen (18)***~~[sixteen (16)]~~ bed psychiatric residential treatment facilities.

Section 4. KRS 6.940 is amended to read as follows:

(1) There is hereby established a Medicaid~~[Managed Care]~~ Oversight ***and*** Advisory Committee, consisting of ten (10) members appointed as follows: four (4) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; four (4) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. The committee shall meet at least four (4) times annually and shall provide oversight on the implementation of Medicaid~~[managed care]~~ within the Commonwealth including access to services, utilization of services, quality of services, and cost containment.

(2) A majority of the entire membership of the Medicaid~~[Managed Care]~~ Oversight ***and*** Advisory Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership.

Section 5. KRS 158.832 is amended to read as follows:

As used in KRS 158.830 to 158.836:

(1) ***"Anaphylaxis" means an allergic reaction resulting from sensitization following prior contact with an antigen which can be a life-threatening emergency. Anaphylaxis may be triggered by, among other agents, foods, drugs, injections, insect stings, and physical activity.***

(2) "Medications" means all medicines individually prescribed by a health care practitioner for the student that pertain to his or her asthma ***or used to treat anaphylaxis, including but not limited to EpiPen or other auto-injectible epinephrine***;

(3)~~[(2)]~~ "Health care practitioner" means a physician or other health care provider who has prescriptive authority; and

(4)~~[(3)]~~ "Self-administration" means the student's use of his or her prescribed asthma ***or anaphylaxis*** medications, pursuant to prescription or written direction from the health care practitioner.

Section 6. KRS 158.834 is amended to read as follows:

(1) The board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student with asthma ***or by a student who is at risk of having anaphylaxis*** if the student's parent or guardian:

(a) Provides written authorization for self-administration to the school; and

(b) Provides a written statement from the student's health care practitioner that the student has asthma ***or is at risk of having anaphylaxis*** and has been instructed in self-administration of ***the student's prescribed medications to treat*** asthma ***or anaphylaxis***~~[medications]~~. The statement shall also contain the following information:

1. The name and purpose of the medications;

2. The prescribed dosage;

3. The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and

4. The length of time for which the medications are prescribed.

(2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.

(3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a

result of any injury sustained by the student from the self-administration of ***his or her medications to treat*** asthma ***or anaphylaxis***~~[medications]~~. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of ***medications used to treat*** asthma ***or anaphylaxis***~~[medications]~~. Nothing in this subsection shall be construed to relieve liability of the school or its employees for negligence.

(4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) to (3) of this section.

Section 7. KRS 158.836 is amended to read as follows:

Upon fulfilling the requirements of KRS 158.834, a student with asthma ***or a student who is at risk of having anaphylaxis*** may possess and use ***medications to treat the*** asthma ***or anaphylaxis***~~[medications]~~ when at school, at a school-sponsored activity, under the supervision of school personnel, or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

Section 8. Whereas, Kentucky students who have severe allergies are at risk of having a life-threatening anaphylactic reaction which can be stabilized by the self-administration of epinephrine using an auto-injector and other medications prescribed by the student's health care provider, and a statewide protocol does not exist for the self-administration of these medications at school, an emergency is declared to exist, and Sections 5 through 7 of this Act take effect upon their passage and approval by the Governor or upon their otherwise becoming a law.

Approved April 22, 2004

CHAPTER 133

(HB 91)

AN ACT relating to adoption of the Uniform Child Custody Jurisdiction and Enforcement Act.

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

ARTICLE 1.

GENERAL PROVISIONS

SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 41 of this Act:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision;

(2) "Child" means an individual who has not attained eighteen (18) years of age;

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders. The term does not include an order relating to child support or other monetary obligation of an individual;

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Sections 22 to 38 of this Act;

(5) "Commencement" means the filing of the first pleading in a proceeding;

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth

with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

(8) "Initial determination" means the first child custody determination concerning a particular child;

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under Sections 1 to 41 of this Act;

(10) "Issuing state" means the state in which a child custody determination is made;

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(14) "Physical custody" means the physical care and supervision of a child;

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 41 of this Act shall not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. sec. 1901 et seq., is not subject to Sections 1 to 41 of this Act to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying Sections 1 to 21 of this Act.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of Sections 1 to 41 of this Act shall be recognized and enforced under Sections 22 to 38 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Sections 1 to 21 of this Act.

(2) Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of Sections 1 to 41 of this Act shall be recognized and enforced under Sections 22 to 38 of this Act.

(3) A court of this state need not apply Sections 1 to 41 of this Act if the child custody law of a foreign country violates fundamental principles of human rights.

SECTION 5. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A child custody determination made by a court of this state that had jurisdiction under Sections 1 to 41 of this Act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 7 of this Act or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

SECTION 6. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If a question of existence or exercise of jurisdiction under Sections 1 to 41 of this Act is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

SECTION 7. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Notice required for the exercise of jurisdiction when a person is outside this state shall be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice but may be by warning order if other means are not effective.

(2) Proof of service shall be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice shall not be required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

SECTION 8. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(2) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(3) The immunity granted by subsection (1) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under Sections 1 to 41 of this Act committed by an individual while present in this state.

SECTION 9. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under Sections 1 to 41 of this Act.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they shall be given an opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3) of this section, a record shall be made of a communication under this section. The parties shall be informed promptly of the communication and granted access to the record.

(5) As used in this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SECTION 10. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.

SECTION 11. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state may request the appropriate court of another state to:

(a) Hold an evidentiary hearing;

(b) Order a person to produce or give evidence pursuant to procedures of that state;

(c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; or

(e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

ARTICLE 2.

JURISDICTION

SECTION 12. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in Section 15 of this Act, a court of this state shall have jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state; or

(b) A court of another state does not have jurisdiction under paragraph (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 18 or 19 of this Act; and

1. The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

2. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships; or

(c) All courts having jurisdiction under paragraph (a) or (b) or this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 18 or 19 of this Act; or

(d) No court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b), or (c) of this subsection.

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

SECTION 13. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in Section 15 of this Act, a court of this state which has made a child custody determination consistent with Section 12 or 14 of this Act has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any other person acting as a parent do not presently reside in this state.

(2) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 12.

SECTION 14. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Section 15 of this Act, a court of this state shall not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subsection (1)(a) or (1)(b) of Section 12 of this Act and:

(1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under Section 13 of this Act or that a court of this state would be a more convenient forum under Section 18 of this Act; or

(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

SECTION 15. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under Sections 1 to 41 of this Act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under Sections 1 to 41 of this Act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, any order issued by a court of this state under this section shall specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 12, 13, and 14 of this Act. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 12, 13, and 14 of this Act, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 12, 13, and 14 of this Act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination had been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the

emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

SECTION 16. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Before a child custody determination is made under Sections 1 to 41 of this Act, notice and an opportunity to be heard in accordance with the standards of Section 7 of this Act shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) Sections 1 to 41 of this Act do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under Sections 1 to 41 of this Act are governed by the law of this state as in child custody proceedings between residents of this state.

SECTION 17. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in Section 15 of this Act, a court of this state shall not exercise jurisdiction under Sections 12 to 21 of this Act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with Sections 1 to 41 of this Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 18 of this Act.

(2) Except as otherwise provided in Section 15 of this Act, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 20 of this Act. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with Sections 1 to 41 of this Act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with Sections 1 to 41 of this Act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) Stay the proceeding for modification pending the entry of an order of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) Enjoin the parties from continuing with the proceeding for enforcement; or

(c) Proceed with the modification under conditions it considers appropriate.

SECTION 18. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state which has jurisdiction under Sections 1 to 41 of this Act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under Sections 1 to 41 of this Act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

SECTION 19. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in Section 15 of this Act, or by other law of this state, if a court of this state has jurisdiction under Sections 1 to 41 of this Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) A court of the state otherwise having jurisdiction under Sections 12, 13, and 14 of this Act determines that this state is a more appropriate forum under Section 18 of this Act; or

(c) No court of any other state would have jurisdiction under the criteria specified in Sections 12, 13, and 14 of this Act.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 12, 13, and 14 of this Act.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court shall not assess fees, costs, or expenses against this state unless authorized by law other than Sections 1 to 41 of this Act.

SECTION 20. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in subsection (1) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to the details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and shall not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

SECTION 21. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 7 of this Act include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(3) The court may enter any order necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

ARTICLE 3.

ENFORCEMENT

SECTION 22. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

As used in Sections 22 to 38 of this Act:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination; and

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

SECTION 23. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Under Sections 22 to 38 of this Act, a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

SECTION 24. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with Sections 1 to 41 of this Act or the determination was made under factual circumstances meeting the jurisdictional standards of Sections 1 to 41 of this Act and the determination has not been modified in accordance with Sections 1 to 41 of this Act.

(2) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in Sections 22 to 38 of this Act are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

SECTION 25. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) A visitation schedule made by a court of another state; or

(b) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(2) If a court of this state makes an order under subsection (1)(b) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Sections 12 to 21 of this Act. The order shall remain in effect until an order is obtained from the other court or the period expires.

SECTION 26. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to a court with jurisdiction in this state:

(a) A letter or other document requesting registration;

(b) Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) Except as otherwise provided in Section 20 of this Act, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1) of this section, the registering court shall:

(a) Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and

(b) Serve notice upon the persons named pursuant to subsection (1)(c) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by subsection (2)(b) of this section shall state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination shall be requested within twenty (20) days after service of notice; and

(c) Failure to contest the registration shall result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction under Sections 12 to 21 of this Act;

(b) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Sections 12 to 21 of this Act; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

SECTION 27. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but shall not modify, except in accordance with Sections 12 to 21 of this Act, a registered child custody determination made by a court of another state.

SECTION 28. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If a proceeding for enforcement under Sections 22 to 38 of this Act is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Sections 12 to 21 of this Act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

SECTION 29. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A petition under Sections 22 to 38 of this Act shall be verified. Certified copies of all orders sought to be enforced and of any order confirming registration shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination shall state:

(a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision is entitled to enforcement under Sections 1 to 41 of this Act and, if so, identify the court, the case number, and the nature of the proceeding;

(c) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(d) The present physical address of the child and the respondent, if known;

(e) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) If the child custody determination has been registered and confirmed under Section 26 of this Act, the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing shall be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(4) An order issued under subsection (3) of this section shall state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 33 of this Act, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child custody determination has not been registered and confirmed under Section 26 of this Act and that:

1. The issuing court did not have jurisdiction under Sections 12 to 21 of this Act;

2. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Sections 12 to 21 of this Act; or

3. The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under Section 26 of this Act but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Sections 12 to 21 of this Act.

SECTION 30. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Section 32 of this Act, the petition and order shall be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

SECTION 31. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Unless the court issues a temporary emergency order pursuant to Section 15 of this Act, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) The child custody determination has not been registered and confirmed under Section 26 of this Act and that:

1. The issuing court did not have jurisdiction under Sections 12 to 21 of this Act;

2. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Sections 12 to 21 of this Act; or

3. The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 7 of this Act, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under Section 26 of this Act but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Sections 12 to 21 of this Act.

(2) The court shall award the fees, costs, and expenses authorized under Section 33 of this Act and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw on adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under Sections 22 to 38 of this Act.

SECTION 32. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition shall be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant shall include the statements required by subsection (2) of Section 29 of this Act.

(3) A warrant to take physical custody of a child shall:

(a) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) Direct law enforcement officers to take physical custody of the child immediately; and

(c) Provide for the placement of the child pending final relief.

(4) The respondent shall be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds, on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

SECTION 33. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) The court may award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court shall not assess fees, costs, or expenses against a state unless authorized by law other than Sections 1 to 41 of this Act.

SECTION 34. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A court of this state shall accord full faith and credit to an order issued by another state and consistent with Sections 1 to 41 of this Act which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Sections 12 to 21 of this Act.

SECTION 35. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

A party may move for an expedited appeal from a final order in a proceeding under Sections 22 to 38 of this Act. Unless the court enters a temporary emergency order under Section 15 of this Act, the enforcing court shall not stay an order enforcing a child custody determination pending appeal.

SECTION 36. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) In a case arising under Sections 1 to 41 of this Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the county attorney or other appropriate public official may take any lawful action, including resort to a proceeding under Sections 22 to 38 of this Act or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(a) An existing child custody determination;

(b) A request to do so from a court in a pending child custody proceeding;

(c) A reasonable belief that a criminal statute has been violated; or

(d) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A county attorney or other appropriate public official acting under this section acts on behalf of the court and shall not represent any party.

SECTION 37. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

At the request of a county attorney or other appropriate public official acting under Section 36 of this Act, a peace officer may take any lawful action reasonably necessary to locate a child or a party and assist a county attorney or other appropriate public official with responsibilities under Section 36 of this Act.

SECTION 38. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the county attorney or other appropriate public official and peace officers under Section 36 or 37 of this Act.

ARTICLE 4.

MISCELLANEOUS PROVISIONS

SECTION 39. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

In applying and construing Sections 1 to 41 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 40. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of Sections 1 to 41 of this Act is governed by the law in effect at the time the motion or other request was made.

(2) Custody decrees previously registered in this state under the provisions of KRS 403.400 to 403.620 shall be deemed registered under the provisions of Sections 1 to 41 of this Act.

SECTION 41. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 41 of this Act may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

Section 42. KRS 403.270 is amended to read as follows:

(1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.

(b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, ***Section 12 of this Act***~~[403.420]~~, and 405.020.

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;

(b) The wishes of the child as to his custodian;

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community;

(e) The mental and physical health of all individuals involved;

(f) Information, records, and evidence of domestic violence as defined in KRS 403.720;

(g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

(h) The intent of the parent or parents in placing the child with a de facto custodian; and

(i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

(3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.

(5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.

(6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Section 43. KRS 403.280 is amended to read as follows:

(1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under ***subsection (1)(a) or (1)(b) of Section 12 of this Act*** ~~[KRS 403.420(1)(a) or (b)]~~ is dismissed, any temporary custody order is vacated.

(4) If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

Section 44. KRS 403.740 is amended to read as follows:

(1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:

(a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;

(b) Restraining the adverse party from committing further acts of domestic violence and abuse;

(c) Restraining the adverse party from disposing of or damaging any of the property of the parties;

(d) Directing the adverse party to vacate the residence shared by the parties to the action;

(e) Utilizing the criteria set forth in KRS 403.270, 403.320, and ***Section 12 of this Act*** ~~[403.420]~~, grant temporary custody; or

(f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.

(2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.

(3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.

(4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed

fourteen (14) days if service has not been made on the adverse party by the fixed court date and time or as the court determines is necessary for the protection of the petitioner.

(5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

Section 45. KRS 403.750 is amended to read as follows:

(1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:

(a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;

(b) Restrain the adverse party from committing further acts of domestic violence and abuse;

(c) Restrain the adverse party from disposing of or damaging any of the property of the parties;

(d) Direct the adverse party to vacate the residence shared by the parties to the action;

(e) Utilizing the criteria set forth in KRS 403.270, 403.320, and ***Section 12 of this Act***~~[403.420]~~, award temporary custody;

(f) Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;

(g) Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785; or

(h) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.

(2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.

(3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.

(4) When temporary child support is granted under the provisions of this section, the court shall enter an order detailing how the child support is to be paid and collected. The enforcement procedures for child support orders, entered pursuant to KRS 403.211, 403.212, and 403.213, including but not limited to 403.215, shall be available to temporary child support orders issued under KRS 403.715 to 403.785.

(5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

Section 46. The following KRS sections are repealed:

403.400 Purposes -- Construction.

403.410 Definitions.

403.420 Prerequisites to jurisdiction -- Commencement of proceeding.

403.430 Notice and opportunity to be heard.

403.440 Notice to persons outside state -- Exception.

403.450 Simultaneous proceedings in other states.

403.460 Inconvenient forum.

403.470 Jurisdiction declined by reason of conduct.

403.480 Information under oath to be submitted to court -- Continuing duty.

403.490 Joinder of parties.

403.500 Court appearance of parties and the child.

403.510 Binding force and res judicata effect of custody decree.

403.520 Recognition of out-of-state decree.

403.530 Modification of decree of another state.

403.540 Filing and enforcement of custody decree of another state.

403.550 Registry of out-of-state custody decrees and proceedings.

403.560 Certified copies of custody decree.

403.570 Taking testimony in another state.

403.580 Hearings and studies in another state -- Orders to appear.

403.590 Assistance to courts of other states.

403.600 Preservation of court records -- Use in other states.

403.610 Request for court records of another state.

403.620 International application.

403.630 Short title.

Approved April 22, 2004

CHAPTER 134

(HB 96)

AN ACT relating to engineering.

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

Section 1. KRS 322.160 is amended to read as follows:

(1) Licenses for individuals and permits for business entities shall be valid for not more than two (2) years from the date of issuance, unless renewed.

(2) The executive director shall notify every licensee and permit holder at least one (1) month in advance of the pending expiration date.

(a) Renewal notices shall be mailed to the licensee or permit holder at their last known address and state the amount of the renewal fee.

(b) All ***license*** renewals shall be completed on or before June 30 of the year of expiration.

(c) ***All permit renewals shall be completed on or before December 31 of the year of expiration.***

(d) Each licensee or permit holder is responsible for notifying the board of any address change.

(3) The failure to renew shall not deprive a licensee or permit holder of the right of renewal, but the fee to be paid for the renewal shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. Any licensee or permit holder who fails to renew within one (1) year after expiration shall furnish the board with:

(a) Satisfactory evidence of qualification of continued practice. However, the board may require reexamination; and

(b) If the licensee or permit holder is a professional land surveyor, evidence of completion of continuing professional development hours for professional land surveyors as required by KRS 322.290.

(4) No licensee shall be required to pay renewal fees to the board during the time the licensee is on active duty in the Armed Forces of the United States.

(a) Any licensee who has previously paid any renewal fee covering a period of time spent on active duty shall, upon filing with the board a copy of his or her discharge, be granted a license renewal without the payment of any fee.

(b) The free renewal shall be for as many license years as the licensee was on active duty and which were covered in whole or in part by the previous payment of a renewal fee.

(c) The continuing professional development requirement for land surveyors under KRS 322.290 shall be waived for those years the licensee was on active duty.

Approved April 22, 2004

CHAPTER 135

(HB 97)

AN ACT relating to tobacco issues.

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

Section 1. KRS 141.010 is amended to read as follows:

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

(1) "Secretary" means the secretary of revenue;

(2) "Cabinet" means the Revenue Cabinet;

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2001, that would otherwise terminate, and as modified by KRS 141.0101;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) For taxable years beginning on or after January 1, 1974, "federal income tax" means the amount of federal income tax actually paid or accrued for the taxable year on taxable income as defined in Section 63 of the Internal Revenue Code, and taxed under the provisions of this chapter, minus any federal tax credits actually utilized by the taxpayer;

(9) "Gross income" in the case of taxpayers other than corporations means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income" in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(i) 1. Exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

2. The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

3. As used in this paragraph:

a. "Distributions" includes, but is not limited to, any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j) 1. a. Exclude the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health

insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

(l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;

(m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;

(n) Exclude any capital gains income attributable to property taken by eminent domain;

(o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;~~[and]~~

(q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted***; and***

(r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(11) "Net income" in the case of taxpayers other than corporations means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state taxes measured by gross or net income, except that such taxes paid to foreign countries may be deducted;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

(d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage

depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;~~[and]~~

(k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted***; and***

(l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code); and

(f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

(14) (a) "Taxable net income," in the case of corporations having property or payroll only in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations having property or payroll both within and without this state means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120;

(c) "Property" means either real property or tangible personal property which is either owned or leased. "Payroll" means compensation paid to one (1) or more individuals, as described in KRS 141.120(8)(b). Property and payroll are deemed to be entirely within this state if all other states are prohibited by Public Law 86-272, as it existed on December 31, 1975, from enforcing income tax jurisdiction;

(d) "Taxable net income" in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(e) "Taxable net income" in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the secretary, "taxable year" means the period for which such return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) "Corporations" means "corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(25) "S corporations" means "S corporations" as defined in Section 1361(a) of the Internal Revenue Code. Stockholders of a corporation qualifying as an "S corporation" under this chapter may elect to treat such qualification as an initial qualification under Subchapter S of the Internal Revenue Code Sections.

Section 2. KRS 131.602 is amended to read as follows:

(1) Any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 30, 2000, shall do one (1) of the following:

(a) Become a participating manufacturer, as that term is defined in section II(jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

1. For 2000: $0.0104712 per unit sold after June 30, 2000;

2. For each of 2001 and 2002: $0.0136125 per unit sold;

3. For each of 2003 through 2006: $0.0167539 per unit sold; and

4. For 2007 and each year thereafter: $0.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by Kentucky or any releasing party located or residing in Kentucky. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow ***on account of units sold in the state*** in a particular year was greater than ***the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold*** ~~[Kentucky's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement, as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment,]~~ had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under paragraph (a) or (b) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) of this section shall annually certify to the Attorney General that it is in compliance with subsections (1)(b) and (2) of this section. The Attorney General may bring a civil action on behalf of Kentucky against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of subsection (1)(b) or (2) of this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of subsection (1)(b) or (2) of this section, may impose a civil penalty, to be paid to the general fund of Kentucky, in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within Kentucky, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

Section 3. KRS 131.620 is amended to read as follows:

(1) The Attorney General may, at any time, require from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund, for the purpose of compliance with KRS 131.600 and 131.602, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(2) To promote compliance with the provisions of Section 2 of this Act, the Attorney General may promulgate regulations requiring a nonparticipating manufacturer subject to the requirements of Section 2 of this Act to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

Section 4. The amendments contained in Section 1 of this Act shall apply for taxable years beginning after December 31, 2003.

Approved April 22, 2004

CHAPTER 136

(HB 135)

AN ACT relating to enhancing state electronic services to businesses.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

(1) The Secretary of State may accept electronic signatures to meet the filing requirements for a:

(a) Corporation as required in KRS Chapter 271B;

(b) Nonprofit corporation as required in KRS Chapter 273;

(c) Professional service corporation as required in KRS Chapter 274;

(d) Limited liability company as required in KRS Chapter 275; and

(e) Partnership as required in KRS Chapter 362.

(2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to 369.120.

Approved April 22, 2004

CHAPTER 137

(HB 157)

AN ACT relating to services for individuals with brain injuries or malfunctions and making an appropriation therefor.

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

Section 1. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of ***three hundred twenty-five***~~[two hundred fifty]~~ dollars ***($325)***~~[($250)]~~, which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) The revenue collected from the service fee imposed by this section shall be utilized as follows:

(a) ***Twelve***~~[Fifteen]~~ percent ***(12%)***~~[(15%)]~~ of the amount collected shall be transferred to the Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;

(b) ***Twenty***~~[Twenty-five]~~ percent ***(20%)***~~[(25%)]~~ of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy;

(c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) ***Sixteen percent (16%) of the amount collected shall be transferred as follows:***

1. Fifty percent (50%) shall be credited to the Traumatic Brain Injury Trust Fund established under KRS 211.476; and

2. Fifty percent (50%) shall be credited to the Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph.

(e) Any amount specified by a specific statute shall be transferred as provided in that statute;~~[and]~~

(f)~~[(e)]~~ ***Forty-six percent (46%) of the amount collected shall be transferred to***~~[The remainder of the service fee shall]~~ be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy***; and***

(g) The remainder of the amount collected shall be transferred to the general fund.

(4) The amounts specified in subsection (3)(a), (b),~~[and]~~ (c)***, and (d)*** of this section shall be placed in trust and agency accounts that shall not lapse.

SECTION 2. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Prisoner" has the same meaning a set out in KRS 441.005; and

(b) "Qualified mental health professional" has the same meaning as set out in KRS 202A.011.

(2) The Cabinet for Health Services shall create a telephonic behavioral health jail triage system to screen prisoners for mental health risk issues, including suicide risk. The triage system shall be designed to give the facility receiving and housing the prisoner an assessment of his or her mental health risk, with the assessment corresponding to recommended protocols for housing, supervision, and care which are designed to mitigate the mental health risks identified by the system. The triage system shall consist of:

(a) A screening instrument which the personnel of a facility receiving a prisoner shall utilize to assess inmates for mental health, suicide, mental retardation, and acquired brain injury risk factors; and

(b) A continuously available toll-free telephonic triage hotline staffed by a qualified mental health professional which the screening personnel may utilize if the screening instrument indicates an increased mental health risk for the assessed prisoner.

(3) In creating and maintaining the telephonic behavioral health jail triage system, the cabinet shall consult with:

(a) The Department of Corrections;

(b) The Kentucky Jailers Association;

(c) The Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses; and

(d) The regional community mental health and mental retardation services programs created under KRS 210.370 to 210.460.

(4) The cabinet may delegate all or a portion of the operational responsibility for the triage system to the regional community mental health and mental retardation services programs created under KRS 210.370 to 210.460 if the regional program agrees and the cabinet remains responsible for the costs of delegated functions.

(5) The cabinet shall design into the implemented triage system the ability to screen and assess prisoners who communicate other than in English or who communicate other than through voice.

(6) The cost of operating the telephonic behavioral health jail triage system shall be borne by the cabinet.

(7) Records generated under this section shall be treated in the same manner and with the same degree of confidentiality as other medical records of the prisoner.

(8) Unless the prisoner is provided with an attorney during the screening and assessment, any statement made by the prisoner in the course of the screening or assessment shall not be admissible in a criminal trial of the prisoner, unless the trial is for a crime committed during the screening and assessment.

(9) The cabinet may, after consultation with those entities set out in subsection (3) of this section, promulgate administrative regulations for the operation of the telephonic behavioral health jail triage system and the establishment of its recommended protocols for prisoner housing, supervision, and care.

SECTION 3. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

Every prisoner upon admittance to detention shall be screened for mental health risk issues, including mental illness, suicide, mental retardation, and acquired brain injury, by the personnel of the facility in which facility the prisoner is detained. Facilities have the discretion of using the telephonic behavioral health jail triage system created in Section 2 of this Act. Where the triage system indicates levels of behavioral health risk, the facility holding the prisoner may consider implementing the recommended protocols for housing, supervision, and care delivery that match the level of risk.

SECTION 4. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

In addition to the twenty dollar ($20) fee created by 2004 Ky. Acts ch. 78, sec. 1, in criminal cases a five dollar ($5) fee shall be added to the costs imposed by KRS 23A.205 that the defendant is required to pay. The fees collected under this section shall be allocated to the Cabinet for Health Services for the implementation and operation of a telephonic behavioral health jail triage system as provided in Sections 2 and 3 of this Act.

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

In addition to the twenty dollar ($20) fee created by 2004 Ky. Acts ch. 78, sec. 2, in criminal cases a five dollar ($5) fee shall be added to the costs imposed by KRS 24A.175 that the defendant is required to pay. The fees collected under this section shall be allocated to the Cabinet for Health Services for the implementation and operation of a telephonic behavioral health jail triage system as provided in Sections 2 and 3 of this Act.

Section 6. The moneys received from the fines levied under subparagraphs 1. and 2. of paragraph (d) of subsection (3) of Section 1 of this Act are hereby appropriated for the purposes provided in those subparagraphs.

Approved April 22, 2004

CHAPTER 138

(HB 189)

AN ACT relating to court-appointed special advocate programs.

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

Section 1. KRS 620.500 is amended to read as follows:

As used in KRS 620.500 to 620.550***, unless the context otherwise requires***:

(1) ***"Association" means the state Court-Appointed Special Advocate Association established in KRS 620.530;***

(2) "Court" means family court or, if there is no family court in the county where the CASA program is located, then District Court;

(3) "Court-appointed special advocate case" and "CASA case" mean a child or group of siblings who are within the jurisdiction of the court as a result of abuse, neglect, or dependency proceedings and for whom the court has appointed and the program director has assigned a CASA volunteer;

(4) "Court-appointed special advocate program" and "CASA program" mean a program by which trained community volunteers are provided to the court for appointment to represent the best interests of children who have come into the court system as a result of dependency, abuse, or neglect***;***~~[.]~~

(5)~~[(2)]~~ "Court-appointed special advocate volunteer" and "CASA volunteer" mean a person who completes training through and is supervised by a CASA program and appointed by a judge to represent the best interests of dependent, abused, and neglected children in court***;***

(6) "Local board" means the local board of directors appointed or selected in accordance with Section 2 of this Act to govern local CASA programs;

(7) "Program director" means the director of each local CASA program selected in accordance with Section 2 of this Act;

(8) "State board" means the state board of directors elected in accordance with KRS 620.530; and

(9) "State director" means the director of the state association provided for in Section 6 of this Act

~~[(3) "CASA case" means a child or group of siblings who are within the jurisdiction of the court as a result of abuse, neglect, or dependency proceedings and for whom the court has appointed and the program director has assigned a CASA volunteer]~~.

Section 2. KRS 620.505 is amended to read as follows:

(1) For the purpose of providing an independent, efficient, and thorough representation for children who enter the court system as a result of dependency, abuse, ***or***~~[and]~~ neglect, there may be established a court-appointed special advocate program by the ***chief judge of family court or, if none, then by the*** Chief District Judge~~[or family court judge within each judicial district]~~.

(2) Local CASA programs shall be governed by a local board of directors. For new CASA programs, the board shall initially be appointed by the ***chief judge of family court or, if none, then by the*** Chief District Judge~~[or family court judge within each judicial district]~~. Members shall be selected by the existing board members thereafter. Each board shall include at least fifteen (15) members. Each board member shall have a demonstrated interest in child welfare issues and commitment to the purpose and role of the court-appointed special advocate volunteers. Cabinet employees shall not be eligible to serve as officers of the board. Members shall, as far as practicable, be representative of the racial and ethnic composition of the area served by the CASA program. The board shall:

(a) Determine major personnel, organization, fiscal, and program policies including, but not limited to, the following:

1. Measures to be taken to safeguard the CASA program's information relating to children, their families, and the CASA volunteers;

2. The procedures for the recruitment, screening, training, and supervision of CASA volunteers; and

3. The procedure for and circumstances warranting dismissal of a CASA volunteer from the CASA program;

(b) Determine overall plans and priorities for the CASA program, including provisions for evaluating progress against performance;

(c) Approve the program budget;

(d) Enforce compliance with all conditions of all grants contracts;

(e) Determine rules and procedures for the governing board;

(f) Select the officers and the executive committee, if any, of the governing board;

(g) Meet at least four (4) times each year;

(h) Submit an annual report to the~~[state Court-Appointed Special Advocate]~~ association in the uniform manner required which shall include, but need not be limited to, the following information:

1. Number of CASA volunteers in the program;

2. Number of program staff;

3. Number of children served;

4. Number of volunteers receiving initial training;

5. Number of and topics for in-service training;~~[and]~~

6. ***The type of source of the funds received and the amount received from each type of source during the previous fiscal year;***

7. The expenditures during the previous year; and

8. Other information as deemed appropriate.

(3) Local CASA programs shall comply with the National CASA Association ***and Kentucky CASA Association*** Standards for Programs. Local programs shall ensure that CASA volunteers are adequately supervised by providing at least one (1) supervisory staff person for every ***thirty (30)*** ~~[fifty (50) cases to which]~~ CASA volunteers ***that*** have been appointed by the court and assigned by the program director. Each local CASA program shall be managed by a qualified director whose service may be voluntary or who may be paid a salary. The program director's duties shall include:

(a) Administration of the CASA program as directed by the ***local and state boards*** ~~[governing board]~~;

(b) Recruitment, screening, training, and supervision of CASA volunteers and other program staff;

(c) Facilitation of the performance of the court-appointed special advocates' duties; and

(d) Ensuring that the security measures established by the ***local and state boards*** ~~[governing board]~~ for safeguarding the information relating to children, their families, and the CASA volunteers are maintained.

(4) CASA volunteers shall, as far as practicable, be representative of the socioeconomic, racial, and ethnic composition of the area served.

(5) CASA volunteers may be removed by the court for nonparticipation or other cause or by the program director pursuant to subsection (2) of this section.

(6) All written court-appointed special advocate reports submitted pursuant to KRS 620.525 shall become part of the cabinet's record of the child.

(7) Employees of the cabinet shall not become volunteers or employees of the court-appointed special advocate program.

(8) Each CASA volunteer, program director, and other program staff shall take an oath, administered by a member of the Court of Justice, to keep confidential all information related to the appointed case except in conferring with or reports to the court, parties to the case, the cabinet, the Citizen Foster Care Review Board, others designated by the court, and as provided by law.

(9) CASA volunteers shall be appointed by the presiding judge to represent the best interest of the child, subject to judicial discretion, and only after confirmation from the program director that the CASA volunteer has been properly screened and trained.

Section 3. KRS 620.510 is amended to read as follows:

(1) Secretarial and support services for each CASA program may be provided by the ***family court, the*** District Court~~,[or]~~ the circuit clerk, or ***a combination thereof*** ~~[both]~~, as ordered by ***the chief judge of family court or, if none, then by*** the Chief District Judge. The Administrative Office of the Courts may also provide secretarial and support services.

(2) CASA programs may receive private funds and local, state, and federal government funding to insure total or partial funding of program activities.

Section 4. KRS 620.515 is amended to read as follows:

(1) A CASA volunteer shall meet the following minimum requirements:

(a) Be at least ***twenty-one (21)*** ~~[eighteen (18)]~~ years of age;

(b) Be of good moral character;

(c) Complete a written application providing the names of at least three (3) references;

(d) Submit to a personal interview with program staff;

(e) Submit to a criminal record check; and

(f) Submit to a check of the child abuse and adult protection registry maintained by the cabinet.

(2) If found acceptable, ***then*** the applicant shall receive a minimum of ***thirty (30)*** ~~[fifteen (15)]~~ hours of initial training and take an oath of confidentiality~~[as]~~ administered by a ***family court judge or, if none, then a*** District Judge.

(3) Training, both initial and in-service, of volunteers shall be provided by the program director or staff following standards adopted pursuant to KRS 620.535.

Section 5. KRS 620.520 is amended to read as follows:

(1) The ***clerk of the court***~~[District Court clerks]~~ shall:

(a) Notify and provide a copy of all dependency, abuse, and neglect petitions to the program director, as soon as the court makes a referral to the program director for assignment of a CASA volunteer to the case;

(b) Provide a copy of all court orders issued pursuant to this section; and

(c) Notify the program director of all scheduled court hearings for cases to which a CASA volunteer has been assigned.

(2) Upon appointment by the court to represent a child, the CASA volunteer shall have access to all information and records pertaining to the child including, but not limited to, the records of the following entities: the cabinet; child-caring facilities operated or licensed by the cabinet; public and private schools; physical and mental health care providers; law enforcement agencies; and other entities deemed appropriate by the court.

(3) With court approval, the CASA volunteer may have access to information and records pertaining to the parents or persons exercising custodial control or supervision of the child assigned to the CASA volunteer, ***including*** information and records of the court**,**~~[;]~~ the cabinet**,**~~[;]~~ public and private child care facilities**,**~~[;]~~ private and public schools**,**~~[;]~~ and ***the*** medical and psychological records of the child assigned to the volunteer. The volunteer shall have access to the medical and psychological records of parents when the court determines that the information is essential to the welfare of the child and the court orders it.

Section 6. KRS 620.537 is amended to read as follows:

If the state ***board***~~[Court-Appointed Special Advocate association or the Administrative Office of the Courts]~~employs a full-time staff person to serve as the director of the~~[state Court-Appointed Special Advocate]~~ association ***then***:

(1) The state director shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The state director shall be of good moral character with at least two (2) years of experience working in a position managing a human services program and who has received a:

(a) Master's degree in social work, sociology, psychology, guidance and counseling, education, criminal justice, or other human service field; or

(b) Baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, criminal justice, or other human service field with, in addition to the work experience required in this subsection, at least two (2) more years of experience working in the human services field**.**~~[; and]~~

(2) The duties of the state director shall be:

(a) To manage the state court-appointed special advocate office, including staff;

(b) To coordinate the activities of the~~[state Court-Appointed Special Advocate]~~ association;

(c) To monitor the policies and practices of local CASA programs for compliance with state laws, National CASA Association Standards for Programs, and reporting requirements established by the state association; to assist local CASA programs in efforts to achieve compliance; and to report to the state association the status of compliance by local CASA programs;

(d) Upon request of local CASA programs, to provide technical assistance to local CASA programs;

(e) To provide technical assistance and support to ***chief judges of family courts,*** Chief District Judges**,** and others in development of new local CASA programs;

(f) To coordinate a statewide public awareness campaign for generating interest in developing new CASA programs, recruiting volunteers, and informing the public of the issues concerning child abuse and neglect; and

(g) Other duties as directed by the~~[state Court-Appointed Special Advocate]~~ association.

Section 7. KRS 620.540 is amended to read as follows:

(1) Secretarial and support services for the ***state***~~[association]~~ board may be provided by the Administrative Office of the Courts.

(2) The association may receive private funds, and local, state, and federal government funds to financially assist existing local ***CASA*** programs, assist local efforts to start a ***CASA*** program, or other activities deemed appropriate by the association.

Approved April 22, 2004

CHAPTER 139

(HB 242)

AN ACT relating to public health.

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

Section 1. KRS 202A.031 is amended to read as follows:

(1) An authorized staff physician may order the admission of any person who is present at, or is presented at, a hospital. ***For the purposes of this subsection only, a hospital may include any acute care hospital that is licensed by the Commonwealth.*** Within twenty-four (24) hours (excluding weekends and holidays) of the admission under this section, the authorized staff physician ordering the admission of the individual shall certify in the record of the individual that in his opinion the individual should be involuntarily hospitalized.

(2) Any individual who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours (excluding weekends and holidays) unless further detained under the applicable provisions of this chapter.

Approved April 22, 2004

CHAPTER 140

(HB 258)

AN ACT relating to fee officials.

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

Section 1. KRS 64.345 is amended to read as follows:

(1) The county clerk and sheriff of each county having a population of seventy thousand (70,000) or over shall receive an annual salary pursuant to the salary schedule in KRS 64.5275.

(2) In counties containing a city of the first class, an urban-county form of government, or a consolidated local government, the amount, if any, allowed for the necessary office expenses of each officer shall be approved by the fiscal court in counties containing a city of the first class, by the legislative body in counties containing an urban-county form of government, or by the legislative council in a consolidated local government. This approval shall be signed by the county judge/executive in a county containing a city of the first class, the executive authority in a county having an urban-county form of government, or the mayor in a consolidated local government. Approval by the fiscal court, urban-county legislative body, or legislative council of a consolidated local government under this subsection shall not include oversight of expenditure of the funds. This oversight shall be retained by the Office of the Controller created pursuant to KRS 42.0201. In counties having a consolidated local government or containing a city of the first class, each sheriff's deputy who uses his own automobile in the performance of official duties shall be authorized an allotment for expenses incurred, up to a maximum of three hundred dollars ($300) per month, to be paid out of the fees and commissions of the sheriff's office. In all other counties with a population of seventy thousand (70,000) or more, the amount, if any, allowed for the necessary office expenses of each officer shall be fixed by the fiscal court by an order entered upon the fiscal court order book no later than January 15 of each year. ***Necessary office expenses for sheriffs and county clerks in counties containing a city of the first class, an urban-county form of government, or a consolidated local government, and counties with a population of seventy thousand (70,000) or more shall include discretionary funds to cover additional expenses related to special training***

and travel related to homeland security emergencies, academy graduations, retirements, state and national sheriff's conventions, and extraordinary office expenses in amounts authorized by the approving authority. A certified copy of the orders, and of any subsequent changes made therein, shall, as soon as entered, be forwarded to the Finance and Administration Cabinet.

(3) Each officer shall, on the first day of each month, send to the Finance and Administration Cabinet a statement, subscribed and sworn to by him, showing the amount of money received or collected by or for him the preceding month as fees or compensation for official duties and shall, with these statements, send to the Finance and Administration Cabinet the amount so collected or received. The Finance and Administration Cabinet may extend the time for filing the statement and making the payment for a period not exceeding ten (10) days in any month.

(4) The salary of each officer and his deputies and assistants and his office expenses shall be paid semimonthly by the State Treasurer upon the warrant of the Finance and Administration Cabinet made payable to the officer. If seventy-five percent (75%) of the amount paid into the State Treasury in any month by any of such officers is not sufficient to pay the salaries and expenses of his office for that month, the deficit may be made up out of the amount paid in any succeeding month; but in no event shall the amount allowed by the Finance and Administration Cabinet to any officer for salaries and expenses exceed seventy-five percent (75%) of the amount paid to the Finance and Administration Cabinet by the officer during his official term.

(5) In counties containing a city of the first class, an urban-county form of government, or a consolidated local government, the number of deputies and assistants allowed to each officer and the compensation allowed to each deputy and assistant shall be approved at reasonable amounts upon motion of each officer by the fiscal court in counties containing a city of the first class, by the legislative council in a consolidated local government, and by the legislative body in counties containing an urban-county form of government. This approval shall be signed by the county judge/executive in a county containing a city of the first class, the executive authority in a county having an urban-county form of government, or the mayor in a consolidated local government. Approval by the fiscal court, urban-county legislative body, or legislative council of a consolidated local government under this subsection shall not include oversight of expenditure of the funds. This oversight shall be retained by the Office of the Controller. In all other counties with a population of seventy thousand (70,000) or more, the number of deputies and assistants allowed to each officer and the compensation allowed to each deputy and assistant shall be fixed at reasonable amounts upon motion of each officer by the fiscal court by an order entered upon the fiscal court order book no later than January 15 of each year. A certified copy of the orders, and of any subsequent changes made therein, shall, as soon as entered, be forwarded to the Finance and Administration Cabinet.

(6) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

(7) The Office of the Controller shall recognize the amount allowed for necessary office expenses of each officer under subsection (2) of this section as the official budget for the office. The Office of the Controller shall use professional judgment in creating the appropriate fund and account structure to ensure that the offices do not exceed annual approved budgetary amounts or expend more than the resources available for the term of office.

Section 2. KRS 70.045 is amended to read as follows:

(1) The sheriff ***of a county with a population of ten thousand (10,000) or more*** may appoint and have sworn in and entered on the county clerk order book one (1) special deputy for each two thousand five hundred (2,500) residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order. ***The sheriff of a county with a population of less than ten thousand (10,000) may appoint and have sworn in and entered on the county clerk order book one (1) special deputy for each one thousand (1,000) residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order.*** The population of the county shall be determined by the most recent count or estimate by the Federal Bureau of Census.

(2) The sheriff in each county may appoint and have sworn in, and entered on the county clerk order book, as many special deputies as needed to assist him in the execution of his duties and office in preparation for or during an emergency situation, such as fire, flood, tornado, storm, or other such emergency situations. For purposes of this section only, an emergency situation is a condition which, in the judgment of the sheriff, requires a response immediately necessary for the preservation of public peace, health or safety, utilizing special deputies previously appointed in preparation for the contingency.

(3) The special deputy shall:

(a) Be appointed and dismissed on the authority of the sheriff;

(b) Not receive any monetary compensation for his time or services;

(c) Serve at the request of the sheriff, unless personal conditions rule otherwise;

(d) Be answerable to and under the supervision of the sheriff, who shall be responsible for the actions of the special deputy; and

(e) Be appointed regardless of race, color, creed, or position.

(4) The position of special deputy as created and defined in subsections (1), (2), and (3) is subject to the provisions of this section only.

Approved April 22, 2004

CHAPTER 141

(HB 264)

AN ACT relating to governmental authority.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 246 IS CREATED TO READ AS FOLLOWS:

(1) No person shall tamper with any livestock.

(2) No person shall sabotage any livestock exhibited at an exhibition.

(3) This section shall not apply to:

(a) Any action taken or activity performed or administered by a licensed veterinarian or in accordance with instructions of a licensed veterinarian if the action or activity was undertaken for accepted medical purposes during the course of a valid veterinarian-client-patient relationship; or

(b) Generally accepted grooming, commercial, or medical practices that are not prohibited by any provision of the Kentucky Revised Statutes or any administrative regulation promulgated thereunder.

(4) As used in this section:

(a) "Tamper" means any of the following:

1. Treatment of livestock in such a manner that food derived from the livestock would be considered adulterated as defined in KRS 217.025;

2. The injection, use, or administration of any drug that is prohibited under any federal law or law of this state, or any drug that is used in any manner that is not authorized under any federal law or law of this state. Whenever the commissioner of the United States Food and Drug Administration or the secretary of the United States Department of Agriculture, pursuant to the federal Food, Drug, and Cosmetic Act, as amended, or federal Virus-Serum-Toxin Act, as amended, approves, disapproves, or modifies the conditions of the approved use of a drug, the approval, disapproval, or modification shall automatically be effective for the purposes of this section unless the Kentucky Department of Agriculture adopts an administrative regulation to alter, for the purposes of the section, the action taken by the commissioner or secretary. The Kentucky Department of Agriculture may adopt an administrative regulation if the department considers it to be necessary or appropriate for the protection of food safety or the health, safety, or welfare of livestock or to prevent the use of a drug for the purpose of concealing, enhancing, transforming, or changing the true conformation, configuration, or condition of livestock. No administrative regulation shall authorize the use of any drug the use of which is prohibited by, or authorize the use of any drug in a manner not authorized by, the commissioner or secretary under either of those acts;

3. The injection or other internal or external administration of any product or material, whether gas, solid, or liquid, to livestock for the purpose of concealing, enhancing, transforming, or

changing the true conformation, configuration, condition, or age of the livestock or making the livestock appear more sound than it actually is;

4. The use or administration, for cosmetic purposes, of steroids, growth stimulants, or internal artificial filling, including paraffin, silicone injection, or any other substance;

5. The use or administration of any drug or feed additive affecting the central nervous system of the livestock;

6. The use or administration of diuretics for cosmetic purposes; and

7. The surgical manipulation or removal or tissue so as to change, transform, or enhance the true conformation or configuration of, or to conceal the age of, the livestock.

(b) "Sabotage" means intentionally tampering with any livestock belonging to or owned by another person that has been registered, entered into, or exhibited in any exhibition, or raised with the apparent intent of being entered into an exhibition.

(5) Where a person violates both the provisions of this section and a section of KRS Chapter 512, the person may be prosecuted under the provisions of KRS Chapter 512.

Section 2. KRS 246.990 is amended to read as follows:

(1) Any person who violates subsection (2) of KRS 246.210***,*** ~~[or]~~ subsection (2) of KRS 246.220***, or subsection (1) of Section 1 of this Act,*** shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for the first offense; he shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) and be confined in the county jail for not less than sixty (60) days nor more than one hundred and twenty (120) days, for each subsequent offense.

(2) Any person who violates subsection (3) of KRS 246.220 shall be fined not less than five dollars ($5) nor more than one hundred dollars ($100) or be imprisoned for not more than ten (10) days, or both. Each day's hindering or refusal of access shall constitute a separate offense.

(3) Any person who violates subsection (4) of KRS 246.220 shall be fined not less than two dollars ($2) nor more than fifty dollars ($50).

(4) Any person who violates subsection (5) of KRS 246.220 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(5) Any person who violates subsection (6) of KRS 246.220 shall be fined not less than ten dollars ($10) nor more than fifty dollars ($50).

(6) Any person who violates subsection (7) of KRS 246.220 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or imprisoned for not more than three (3) months, or both.

(7) Any owner or operator of a dairy plant who shall fail to comply with the provisions of KRS 246.240 or any part thereof shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars ($100).

(8) Any person who violates any administrative regulation promulgated by the department under the provisions of KRS 246.660 shall have a civil fine imposed of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(9) Any person who violates subsection (2) of Section 1 of this Act shall be disqualified from exhibiting at an exhibition for a first offense, and shall be disqualified for up to five (5) years for a second or subsequent offense.

Section 3. KRS 512.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Litter" means rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind or description and whether or not it is of value.

(2) "Noxious substance" means any substance capable of generating offensive, noxious or suffocating fumes, gases or vapors.

(3) "Property" includes cattle.

Section 4. KRS 13A.312 is amended to read as follows:

(1) If authority over a subject matter is transferred to another administrative body ***or if the name of an administrative body is changed*** by statute or by executive order during the interim between regular sessions of the General Assembly, the ***administrative regulations of that*** administrative body ***in effect on the effective date of the statutory change or the executive order shall remain in effect as they exist until the administrative body that has been granted authority over the subject matter amends or repeals the administrative regulations pursuant to KRS Chapter 13A.***

(2) Pursuant to the statutory change or executive order, the regulations compiler shall alter the administrative regulations referenced in subsection (1) of this section to:

(a) Change the name of the administrative body pursuant to the provisions of the statute or executive order; and

(b) Make any other technical changes necessary to carry out the provisions of the statute or executive order.

(3) The administrative body that has been granted statutory authority over the subject matter shall provide to the regulations compiler in writing:

(a) A listing of the administrative regulations that require any changes; and

(b) The specific names, terms, or other information to be changed with those changes properly referenced.

(4) The administrative body that has been granted statutory authority over the subject matter shall submit new forms to replace forms previously incorporated by reference in an administrative regulation if the only changes on the form are the name and mailing address of the administrative body. If there are additional changes to a form incorporated by reference, the administrative body shall promulgate an amendment to the existing administrative regulation and make the changes to the material incorporated by reference in accordance with KRS 13A.2255.

(5) If an administrative body is abolished by statute or executive order, and the authority over its subject matter is not transferred to another administrative body, the Governor, or the secretary of the cabinet to which the administrative body was attached, shall promulgate an administrative regulation to repeal the existing administrative regulations that were promulgated by the abolished administrative body. The repeal shall be accomplished as provided by KRS 13A.310~~[.~~

~~(a) From which authority has been transferred shall repeal the existing administrative regulations governing the subject matter;~~

~~(b) That has been granted authority over the subject matter shall promulgate administrative regulations governing the subject matter;~~

~~(2) Agencies promulgating administrative regulations to comply with paragraphs (a) and (b) of subsection (1) of this section shall file the repeal and the new administrative regulation at the same time.~~

~~(3) Administrative regulations repealed under the provisions of this subsection shall be repealed as provided by KRS 13A.310(3)]~~.

Approved April 22, 2004

CHAPTER 142

(HB 292)

AN ACT relating to revenue and taxation and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "nursing facility services" means services provided by a licensed skilled care facility, nursing facility, nursing home, or intermediate care facility, excluding intermediate care facilities for the mentally retarded.

(2) In addition to the tax imposed KRS 142.307 on nursing facility services, a provider assessment is hereby imposed at a uniform rate per non-Medicare patient day equal to two percent (2.0%) of gross revenues received by all nursing facilities on or after July 1, 2004 for the provision of nursing facility services.

(3) In addition to the assessment levied under subsection (2) of this section, and the tax imposed by KRS 142.307, an additional assessment on nursing facility services shall be imposed per non-Medicare patient day not to exceed four percent (4%) of gross revenue from the provision of nursing facility services. This assessment shall be imposed on all nursing facilities except acute-care based skilled nursing facilities, intermediate care facilities, or nursing facilities. The second assessment is not required to be uniform, and the rate of assessment per non-Medicare day may be variable based upon a facility's total annual census days if deemed an acceptable waivered class by the Centers for Medicare and Medicaid Services.

(4) All revenues collected pursuant to subsections (2) and (3) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.

(5) The Department for Medicaid Services shall promulgate administrative regulations to ensure that a portion of the revenues generated from the assessment imposed by subsection (3) of this section and federal matching funds be used to increase reimbursement rates for nursing facilities. The regulations shall, at a minimum:

(a) Provide that the rate increases shall be used to fully phase in those providers whose current rates are less than the Medicaid price-based rates;

(b) Correct for inflation adjustments for the past two (2) years; and

(c) Re-base the rates to recognize current wage and benefit levels in the industry.

(6) The remaining revenue generated by the assessments levied under subsections (2) and (3) of this section and federal matching funds shall be used to supplement the medical assistance related general fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.

(7) On or before July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Federal Centers for Medicare and Medicaid Services to request a waiver of the uniformity tax requirement pursuant to 42 CFR 433.68(e)(2). If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.

(8) Assessments imposed pursuant to this section shall begin on July 1, 2004, but are not due and payable until rates are increased as provided in subsection (5) of this section.

(9) The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.

SECTION 2. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the tax imposed by KRS 142.307 on intermediate care facility services for the mentally retarded, an additional assessment is hereby imposed at a uniform rate of five and one-half percent (5.5%) on gross revenues received by each provider after July 1, 2004, for the provision of intermediate care facility services for the mentally retarded and the provision of services through, or identical to those provided under, the Supports for Community Living Waiver Program.

(2) All revenues collected pursuant to subsection (1) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.

(3) The Department for Medicaid Services shall promulgate regulations to ensure that a portion of the revenues generated from the assessment levied under this section and federal matching funds shall be used for rate increases for intermediate care facility services for the mentally retarded and providers of services

through, or identical to those provided under, the Supports for Community Living Waiver Program to recognize cost increases including current wage and benefit levels in the industry.

(***4***) ***The remaining revenue generated from the assessment levied under this section and federal matching funds shall be used to supplement the medical assistance related General Fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.***

(5) On or before the July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Centers for Medicare and Medicaid Services to request a waiver of the uniformity requirement pursuant to 42 CFR 433.68(e)(2).

(6) If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.

(7) The assessment imposed pursuant to this section shall begin on July 1, 2004, but is not due and payable until rates are increased pursuant to this provision.

(8) The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.

SECTION 3. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Notwithstanding the provisions of KRS 154.20-254, 154.20-255, and 154.20-258, an investment fund approved by the Kentucky Economic Development Finance Authority after July 1, 2004, and otherwise qualified for tax credits pursuant to the Kentucky Investment Fund Act as set forth in KRS 154.20-250 to 154.20-284, may invest up to one hundred percent (100%) of its committed cash contributions in a single knowledge-based entity. A city, county, other local governmental entity, or any entity approved by the Kentucky Economic Development Finance Authority, may invest in an investment fund created for this purpose and may transfer, for some or no consideration, any or all of the tax credits received pursuant to Kentucky Investment Fund Act to a private entity. The Kentucky Economic Development Finance Authority shall have discretion to approve or deny applications for entities seeking credits pursuant to this section.

Section 4. KRS 136.071 is amended to read as follows:

(1) Notwithstanding any other provisions of this chapter, a ***bank holding company as defined in KRS 287.900 that***~~[corporation whose commercial domicile is in this state and]~~ holds directly or indirectly stock or securities in ***financial institutions subject to the tax imposed by KRS 136.500 to 136.570***~~[other corporations]~~ equal to or greater than fifty percent (50%) of its total assets may, at the option of the taxpayer,~~[be considered as one (1) corporation for purposes of determining and apportioning total "capital," or]~~ compute its "capital" under KRS 136.070(2) as follows:

(a) Determine the corporation's total capital as provided in KRS 136.070(2).

(b) Deduct from the amount determined in subsection (a) of this section, the book value of its investment in the stock and securities of any ***financial institutions subject to the tax imposed by KRS 136.500 to 136.570***~~[corporation]~~ in which it owns more than fifty percent (50%) of the outstanding stock~~[of such corporation]~~.

(2) For purposes of determining the ratio of stock and securities to total assets, the value shall be the value of the accounts as reflected on financial statements prepared for book purposes as of the last day of the calendar or fiscal year. The term "stock and securities" as used in this section means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness. The term "book value" means the value as shown on financial statements prepared for book purposes as of the last day of the calendar or fiscal year.

Section 5. KRS 136.290 is amended to read as follows:

(1) Every federally or state chartered savings and loan association, savings bank, and other similar institutions operating solely in Kentucky shall, during January of each year, file with the Revenue Cabinet a report containing such information and in such form as the cabinet may require.

(2) The cabinet shall fix the total value, as of January 1 of each year, of the capital of each financial institution included in subsection (1) of this section. Capital shall include certificates of deposit, savings accounts, demand deposits, undivided profits, surplus, and general reserves, excepting the share of borrowing members where the amount borrowed equals or exceeds the amount paid in by those members. ***For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or Section 6 of this Act or that is exempt from state taxation by federal law.*** The cabinet shall immediately notify each institution of the value so fixed.

Section 6. KRS 136.310 is amended to read as follows:

(1) Every federally or state chartered savings and loan association, savings bank, and other similar institution authorized to transact business in this state, with property and payroll within and without this state, shall, during January of each year, file with the Revenue Cabinet a report containing information and in such form as the cabinet may require.

(2) The Revenue Cabinet shall fix the fair cash value, as of January 1 of each year, of the capital attributable to Kentucky in each financial institution included in subsection (1) of this section. The methodology employed by the cabinet shall be a three (3) step process as follows:

(a) The total value of deposits maintained in Kentucky less any amounts where the amount borrowed equals or exceeds the amount paid in by those members.

(b) The Kentucky apportioned value of capital shall include undivided profits, surplus, general reserves, and paid-up stock. ***For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or this section or that is exempt from state taxation by federal law.*** The Kentucky value of capital shall be determined by a fraction, the numerator of which is the receipts factor plus the outstanding loan balance factor plus the payroll factor, and the denominator of which is three (3).

(c) The values determined in steps (a) and (b) of this subsection shall be added together to determine total Kentucky capital and then reduced by the influence of ownership in tax-exempt United States obligations to determine Kentucky taxable capital. The influence of tax-exempt United States obligations is to be determined from the reports of condition filed with the applicable supervisory agency as follows: the average amount of tax-exempt United States obligations for the calendar year, over the average amount of total assets for the calendar year multiplied by total Kentucky capital. The cabinet shall immediately notify each institution of the value so fixed.

(3) The receipts factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is all receipts derived from loans and other sources negotiated through offices or derived from customers in Kentucky, and the denominator of which is total business receipts for the preceding calendar year.

(4) The outstanding loan balance factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices or made to customers in Kentucky. The denominator is the average balance of all outstanding loans. The average outstanding loan balance is determined by adding the outstanding loan balance at the beginning of the preceding calendar year to the outstanding loan balance at the end of the preceding calendar year and dividing by two (2). However, if the yearly beginning balance and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average balance.

(5) The payroll factor specified in subsection (2)(b) of this section shall be determined for the preceding calendar year under the provisions of KRS 141.120(8)(b) and regulations promulgated thereunder.

(6) By July 1 succeeding the filing of the report as provided in subsection (1) of this section, each financial institution included in subsection (1) of this section shall pay directly into the State Treasury a tax of one dollar ($1) for each one thousand dollars ($1,000) paid in on its Kentucky taxable capital as fixed in subsection (2)(c) of this section. The institution shall not be required to pay local taxes upon its capital stock, surplus, undivided profits, notes, mortgages, or other credits, and the tax provided by this section shall be in lieu of all taxes for state purposes on intangible property of the institution, nor shall any depositor of the institution be required to

list his deposits for taxation under KRS 132.020. Failure to make reports and pay taxes as provided in this section shall subject the institution to the same penalties imposed for such failure on the part of the other corporations.

(7) If a financial institution included in subsection (1) of this section selects, it may deduct taxes imposed in subsection (6) of this section from the dividends paid or credited to a nonborrowing shareholder.

(8) Every Agricultural Credit Association chartered by the Farm Credit Administration being authorized to transact business in Kentucky but having no employees located within or without the state shall be subject to the same tax imposed pursuant to either KRS 136.300 or this section as that imposed upon its wholly owned Production Credit Association subsidiary. For purposes of computing Kentucky apportioned value of capital pursuant to subsection (2) of this section, those Agricultural Credit Associations subject to the tax imposed by this section shall utilize that Kentucky apportionment fraction computed and utilized by its wholly owned Production Credit Association subsidiary for the same report period.

Section 7. Section 4 of this Act shall be retroactively effective for tax periods beginning on or after January 1, 2003.

Section 8. Whereas corporate license tax returns are due April 15, 2004, it is necessary for this Act to become effective immediately. Therefore, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Section 9. Notwithstanding any statutory law or administrative regulations, any debt approved and funded by the Bluegrass State Skills Corporation or the Kentucky Economic Development Finance Authority may be renegotiated, amended, or forgiven with approval of their respective Boards. Any debt collected on behalf of the Kentucky Economic Development Finance Authority, or Bluegrass State Skills Corporation shall be returned to them subject to any reasonable fees due for services rendered by other agencies or private vendors in collecting the debt on their behalf and shall not be deemed general funds.

Approved April 22, 2004

CHAPTER 143

(HB 297)

AN ACT relating to contracts for the payment of taxes.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 371 IS CREATED TO READ AS FOLLOWS:

(1) If a contract requires one (1) party to reimburse another party for taxes levied under Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, the party making the reimbursement, at its option, shall not be required to reimburse the other party more than one (1) business day before the other party is required to remit the taxes to the Internal Revenue Service.

(2) If a party chooses to exercise its option under subsection (1) of this section, and provision is not already provided in the contract, the party shall notify the other party in writing of its intention. The option may not be exercised until at least thirty (30) days after the written notification or the beginning of the next federal tax quarter, whichever is later.

(3) The party to be reimbursed under subsection (1) of this section may require security from the reimbursing party for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The party to be reimbursed shall not change other payment terms of the contract due to the timing of the tax reimbursement, but may require the taxes to be reimbursed by electronic transfer of funds.

Section 2. This Act applies to all continuing contracts now in effect that have no expiration date and all contracts entered into or renewed after the effective date of this Act.

Approved April 22, 2004

CHAPTER 144

(HB 305)

AN ACT relating to retail agreement contracts and declaring an emergency.

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

Section 1. KRS 365.800 is amended to read as follows:

As used in KRS ***365.800***~~[365.805]~~ to 365.840, unless the context requires otherwise:

(1) "Current net price on parts" means the price listed by ***a supplier***~~[the wholesaler, manufacturer or distributor of farm implements, tractors, farm machinery, utility and industrial equipment, including lawn and garden equipment, attachments or repair parts for such equipment]~~ in a price list or catalogue in effect at the time ***a retail agreement***~~[the]~~ contract is ***terminated***~~[canceled or discontinued]~~, less any applicable trade and cash discounts;

(2) "Retailer" means any person, firm***,*** or corporation***, including heirs, personal representatives, guardians, trustees, assignees, or receivers of the person, firm, or corporation,*** engaged in the business of selling and retailing ***inventory***~~[farm implements, tractors, farm machinery, utility and industrial equipment, including lawn and garden equipment, attachments, and repair parts for such equipment]~~, but shall not include retailers of petroleum ***or***~~[,]~~ motor vehicle and related automotive care and replacement products~~[normally sold by such retailers. The term "retailer" shall also include any person engaged in the aforementioned business, his heirs, personal representatives, or his guardian]~~;

(3) "Inventory" means farm implements, tractors, farm machinery, ***consumer products,*** utility and industrial equipment, ***construction and excavating equipment, and any***~~[including lawn and garden equipment,]~~ attachments,~~[and]~~ repair parts***, or superseded parts*** for ***the***~~[such]~~ equipment;~~[and]~~

(4) "Net cost" means the price ***a***~~[the]~~ retailer paid for the inventory to ***a supplier***~~[the wholesaler, manufacturer or distributor of such inventory]~~, less all discounts allowed***;***

(5) "Consumer products" means machines designed for or adapted and used for horticulture, floriculture, landscaping, grounds maintenance, or turf maintenance, including but not limited to lawnmowers, rototillers, trimmers, blowers, and other equipment used in both residential and commercial lawn, gardening, or turf maintenance, installation, or other applications;

(6) "Superseded parts" means any part that will provide the same function as a currently available part as of the date of termination of a retail agreement contract; and

(7) "Supplier" means any wholesaler, manufacturer, or distributor of inventory, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, or any receiver, assignee, or trustee of the original wholesaler, manufacturer, distributor, or corporation.

Section 2. KRS 365.805 is amended to read as follows:

If a~~[Whenever any]~~ retailer enters into a ***retail***~~[franchise]~~ agreement ***contract, written or unwritten,*** with a ***supplier where***~~[wholesaler, manufacturer or distributor of inventory wherein]~~ the retailer agrees to maintain an inventory and the contract is terminated, ***the supplier***~~[then such wholesaler, manufacturer or distributor]~~ shall repurchase the inventory as provided in KRS ***365.800***~~[365.810]~~ to 365.840. The retailer may keep the inventory if ***the retainer***~~[he]~~ desires. If the retailer has any outstanding debts to the ***supplier,***~~[wholesaler, manufacturer or distributor then]~~ the repurchase amount may be credited to the retailer's account.

Section 3. KRS 365.810 is amended to read as follows:

(1) ***(a)*** The ***supplier***~~[wholesaler, manufacturer or distributor of inventory]~~ shall repurchase~~[that]~~ inventory previously purchased from ***the supplier***~~[him]~~ and held by the retailer on the date of termination of the ***retail agreement*** contract. The ***supplier***~~[wholesaler, manufacturer or distributor of inventory]~~ shall pay one hundred percent (100%) of the net cost, plus any freight charges paid, of all new, unsold, undamaged***,*** and complete farm implements, tractors, farm machinery, utility and industrial equipment, ***construction and excavating equipment, consumer products,***~~[including lawn and garden equipment]~~

and ***any*** attachments ***for the equipment,*** and one hundred percent (100%) of the current net price of all new, unused***,*** and undamaged repair parts ***or superseded parts***.

(b) The supplier shall repurchase inventory used in demonstrations, including inventory leased or rented primarily for demonstration or lease purposes, at its agreed depreciated value, if the equipment is in like-new condition and has not been damaged.

(2) The ***supplier***~~[wholesaler, manufacturer or distributor]~~ shall pay the retailer five percent (5%) of the current net price on all new, unused***,*** and undamaged repair parts ***or superseded parts*** returned to cover the cost of handling, packing***,*** and loading. The ***supplier may perform***~~[wholesaler, manufacturer or distributor shall have the option of performing]~~ the handling, packing, and loading in lieu of paying the five percent (5%) of the current net price for these services.

(3) (a) The supplier shall purchase from the retailer, at its amortized value, any specific data processing hardware and software and telecommunications equipment that the supplier required the retailer to purchase within five (5) years of the termination of the retail agreement contract.

(b) The supplier shall repurchase from the retailer, at seventy-five percent (75%) of the net cost, specialized repair tools purchased within three (3) years of the date of the termination of the retail agreement contract, and, at fifty percent (50%) of the net cost, specialized repair tools purchased more than three (3) but less than six (6) years of the date of the termination of the retail agreement contract, if:

1. The supplier required the purchase;

2. The retailer held the tools on the date of the termination of the retail agreement contract;

3. The tools were unique to the supplier's product line; and

4. The tools were in complete and resalable condition.

(4) The supplier shall purchase from the retailer, at its amortized value, any specific signage incorporating the supplier's name, logo, tradename, trademark, or other information identifying the supplier or the products manufactured or distributed by the supplier which the supplier expressly required the retailer to purchase in connection with the retail agreement contract.

(5) If, in a retail agreement contract, the supplier requires the retailer's employees to participate in training programs sponsored or promoted by the supplier, then the supplier shall reimburse the retailer for any out-of-pocket expenses incurred by the retailer. The reimbursement shall only be required if the training took place within one (1) year of the termination of the retail agreement contract.

(6) The supplier shall purchase from the retailer, at its amortized value, all trade fixtures and other improvements to the business premises of the retailer that the supplier expressly required the retailer to purchase or acquire in connection with the retail agreement contract.

Section 4. KRS 365.815 is amended to read as follows:

Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the ***supplier***~~[wholesaler, manufacturer or distributor of such inventory]~~. ***Annually, at the end of each calendar year after the termination of a retail agreement contract, the retailer's reserve accounts for recourse contracts shall not be debited by a supplier or lender for any deficiency unless the retailer has been given at least seven (7) business days notice by registered U.S. mail, return receipt requested, of any proposed sale of the equipment financed and has been given an opportunity to purchase the equipment. The former retailer shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the retailer in direct proportion to the liabilities outstanding.***

Section 5. KRS 365.820 is amended to read as follows:

The provisions of KRS 365.800 to 365.840 shall not require the repurchase from a retailer of:

(1) Any repair part ***or superseded part*** which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets***,*** or batteries;

(2) Any repair part ***or superseded part*** which is in a broken or damaged package;

(3) Any single repair part ***or superseded part*** which is priced as a set of two (2) or more items;

(4) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the ***supplier***~~[wholesaler, manufacturer or distributor]~~, of clear title, free and clear of all claims, liens***,*** and encumbrances;

(5) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(6) Any inventory which is not in a new, unused***,*** and undamaged condition***, except that inventory used in demonstrations or leased, as provided in Section 3 of this Act, shall be considered new and unused***;

(7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract; ***or***~~[and]~~

(8) Any inventory which was acquired by the retailer from any source other than the ***supplier***~~[wholesaler, manufacturer or distributor]~~.

Section 6. KRS 365.825 is amended to read as follows:

If any ***supplier fails***~~[wholesaler, manufacturer or distributor of inventory shall fail]~~ or ***refuses***~~[refuse]~~ to repurchase any inventory covered under the provisions of KRS 365.800 to 365.840 within sixty (60) days after shipment of ***the***~~[such]~~ inventory to the ***supplier***~~[wholesaler, manufacturer or distributor]~~, ***the supplier***~~[he]~~ shall be liable in a civil action for one hundred percent (100%) of the current net price of the repair parts ***and superseded parts*** inventory plus five percent (5%) for handling, packing***,*** and loading, if applicable***,*** and one hundred percent (100%) of the net cost of all other inventory, plus any freight charges paid by the retailer, the retailer's reasonable attorney's fees, court costs***,*** and interest on the current net price computed at the legal interest rate from the sixty-first day after shipment.

Section 7. KRS 365.830 is amended to read as follows:

(1) In the event of the death of a retailer or the majority owner of the equity interests of the entity operating as a retailer, the supplier shall, at the option of the heirs of the retailer or the majority owner, repurchase the inventory from the heirs as if the supplier had terminated the retail agreement contract. The heirs shall have one (1) year from the date of the death of the retailer or majority owner to exercise their option regarding the repurchase. No repurchase of any inventory shall be required if the heirs and the supplier enter into a new retail agreement contract to operate the retail dealership. As used in this section, "heir" means a spouse, child, son-in-law, daughter-in-law, or lineal descendant of the retailer or majority owner of the dealership.

(2) A supplier shall have ninety (90) days in which to consider and make a determination on a request by an heir to enter into a new retail agreement contract to operate the retail dealership. In the event the supplier determines that the request is not acceptable, the supplier shall provide the heir with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir to operate a dealership without the specific written consent of the supplier.

(3) If a supplier and a retailer or majority owner of the equity interests of the entity operating as a retailer have previously executed an agreement concerning succession rights prior to the retailer's or majority owner's death, and if the agreement had not been revoked, the agreement shall be observed even if it designates someone other than the surviving heirs of the decedent as the successor~~[In the event of death or incapacity of the retailer or insolvency of the corporation operating as a retailer, the wholesaler, manufacturer or distributor of inventory shall, at the option of the heir, personal representative, guardian or receiver, repurchase the inventory from such heir, personal representative, guardian or receiver as if the wholesaler, manufacturer or distributor had terminated the contract. The heirs, personal representative, guardian or receiver shall have up to one (1) year from the date of death, incapacity or insolvency to exercise their option under KRS 365.800 to 365.840. Nothing in this chapter shall require the repurchase of any inventory if the heir, personal representative, guardian, receiver or retailer and wholesaler, manufacturer or distributor enter into a new contract to operate the retail dealership]~~.

Section 8. KRS 365.835 is amended to read as follows:

The provisions of KRS 365.800 to 365.840 shall not be construed to affect in any way any security interest which the ***supplier***~~[wholesaler, manufacturer or distributor of inventory]~~ may have in the inventory of the retailer, and any repurchase~~[hereunder]~~ shall not be subject to the provisions of the bulk sales law. The retailer ***or supplier***~~[, wholesaler, manufacturer or distributor of inventory]~~ may***, in person or through a representative,***~~[furnish a representative to]~~ inspect all ***inventory***~~[parts]~~ and certify ***its***~~[their]~~ acceptability when ***it is*** packed for shipment ***to the supplier under a repurchase arrangement. Failure of the supplier to provide a representative to inspect the***

inventory within sixty (60) days of the notice of termination shall result in automatic acceptance by the supplier of all returned items.

Section 9. KRS 365.840 is amended to read as follows:

The provisions of KRS 365.800 to ***365.840*** ~~[365.835]~~ shall apply to all ***retail agreement*** contracts ***entered into before the effective date of this Act*** ~~[now in effect, contracts]~~ which have no expiration date and are a continuing contract**,** and all other contracts entered into or renewed ***on or after the effective date of this Act*** ~~[as of February 28, 1986]~~. Any contract in force ***before the effective date of this Act*** ~~[and effect after February 28, 1986]~~, which by its own terms will terminate on a date ***after the effective date of this Act*** ~~[subsequent thereto]~~ shall be governed by the law as it existed prior to ***the effective date of this Act*** ~~[February 28, 1986]~~.

SECTION 10. A NEW SECTION OF KRS 365.800 TO 365.840 IS CREATED TO READ AS FOLLOWS:

(1) No supplier, directly or through an officer, agent, or employee, shall terminate or substantially change the competitive circumstances of a retail agreement contract without good cause. As used in this subsection, "good cause" means the failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement contract if the requirements are not different from those imposed on other retailers similarly situated in this state. In addition, good cause exists if:

(a) There has been a closeout or sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;

(b) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

(c) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;

(d) The retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;

(e) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and supplier; or

(f) The retailer transfers an interest in the dealership; or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies; or a substantial reduction occurs in the interest of an individual proprietor, partner, or major shareholder in the dealership. Good cause does not exist if the supplier consents to an action described in this subsection.

(2) No supplier, directly or through an officer, agent, or employee, shall terminate or substantially change the competitive circumstances of a retail agreement contract based on high unemployment in the dealership market area, a labor dispute, the results of a natural disaster, including a sustained drought, or other circumstances beyond the retailer's control.

(3) Except as provided in paragraphs (a) to (f) of subsection (1) of this section, a supplier shall provide a retailer with at least ninety (90) days written notice of termination of a retail agreement contract. The notice shall also contain a sixty (60) day written notice to cure the deficiency. The notice shall not be required if the termination is enacted for reasons included in paragraphs (a) to (f) of subsection (1) of this section. The notice shall state all reasons constituting good cause for action. In the case where termination is enacted due to market penetration, a reasonable period of time, not less than one (1) year, shall have existed where the supplier has worked with the retailer to gain the desired market share.

SECTION 11. A NEW SECTION OF KRS 365.800 TO 365.840 IS CREATED TO READ AS FOLLOWS:

No supplier shall:

(1) Coerce any retailer to accept delivery of inventory which the retailer has not ordered voluntarily, except as required by any applicable law, or unless parts or attachments are safety parts or attachments required by a supplier;

(2) Condition the sale of additional inventory to a retailer on a requirement that the retailer also purchase other goods or services, except that a supplier may require the retailer to purchase those parts reasonably

necessary to maintain the quality of operation of the inventory used in the retailer's designated trade area; or

(3) Coerce a retailer into refusing to purchase inventory manufactured by another supplier.

SECTION 12. A NEW SECTION OF KRS 365.800 TO 365.840 IS CREATED TO READ AS FOLLOWS:

(1) Claims filed by a retailer for payment under warranty agreements shall be approved or disapproved within thirty (30) days of receipt by the supplier. All claims for payment shall be paid within thirty (30) days of their approval. If any claim is disapproved, the supplier shall notify the retailer within thirty (30) days stating the specific grounds upon which the disapproval is based. If a claim is not specifically disapproved within thirty (30) days of receipt, it shall be deemed approved and payment by the supplier shall be within thirty (30) days.

(2) If, after termination of a retail agreement contract, a retailer submits a claim to the supplier for warranty work performed prior to the effective date of the termination, the supplier shall accept or reject the claim within thirty (30) days of receipt. All claims for payment shall be paid within thirty (30) days of their acceptance. If any claim is rejected, the supplier shall notify the retailer within thirty (30) days stating the specific grounds upon which the rejection is based. If a claim is not specifically rejected within thirty (30) days of receipt, it shall be deemed accepted and payment by the supplier shall be within thirty (30) days.

(3) Warranty work performed by a retailer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours, multiplied by the retailer's established customer hourly retail labor rate, which shall have previously been made known to the supplier.

(4) Expenses expressly excluded under the supplier's warranty to the customer shall not be included nor required to be paid on requests for compensation from a retailer for warranty work performed.

(5) Expenses for all parts used by a retailer in performing warranty work shall be paid to the retailer in the amount equal to the retailer's net price for parts used, plus a minimum of fifteen percent (15%). The percentage additive is to reimburse the retailer for reasonable costs of doing business in performing warranty service on the supplier's behalf, including, but not limited to, freight and handling costs incurred.

(6) The supplier has the right to adjust for errors discovered during audit, and if necessary, to adjust claims paid in error.

(7) A retailer may accept the manufacturer's reimbursement terms and conditions in lieu of the other provisions provided by this section.

SECTION 13. A NEW SECTION OF KRS 365.800 TO 365.840 IS CREATED TO READ AS FOLLOWS:

The provisions of KRS 365.800 to 365.840 shall not be waivable in any retail agreement contract, and any attempted waiver shall be void.

Section 14. Whereas the early spring is the most important time for the farming industry and any relief to farm equipment dealers offered by this bill would be negated by a later effective date, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 22, 2004

CHAPTER 145

(HB 309)

AN ACT relating to school employees' sick leave.

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

Section 1. KRS 161.155 is amended to read as follows:

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's ***or employee's*** spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's ***or employee's*** home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher ***and full-time employee*** in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher ***or employee*** if he ***or she*** presents a personal affidavit or a certificate of a physician stating that the teacher ***or employee*** was ill, that the teacher ***or employee*** was absent for the purpose of attending to a member of his ***or her*** immediate family who was ill, or for the purpose of mourning a member of his ***or her*** immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher ***or employee*** on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher ***or employee*** under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he ***or she*** transfers his ***or her*** place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.

(4) Accumulated days of sick leave shall be granted to a teacher ***or employee*** if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher ***or employee*** is unable to commence his ***or her*** duties on the opening day of the school year, but will be able to assume his ***or her*** duties within a period of time that the board determines to be reasonable.

(5) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher or employee may receive donations of sick leave if:

1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or

b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;

2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;

3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher or employee has complied with the school district's policies governing the use of sick leave.

(c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(8) A teacher ***or employee*** may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(9) After July 1, 1982, a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

(11) The death benefit provided in subsection (9) of this section may be cited as the Baughn Benefit.

Approved April 22, 2004

CHAPTER 146

(HB 342)

AN ACT relating to vaccination for meningococcal meningitis disease.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares that:

(1) Meningococcal meningitis disease is a potentially fatal infectious and contagious bacterial disease that can be spread by coughing and sharing drinking glasses;

(2) Since the disease often presents itself with flu-like symptoms, many victims of the disease die before it is even diagnosed. From 1991 to 1997 the cases of meningococcal meningitis disease in young adults fifteen (15) to twenty-four (24) years of age nearly doubled;

(3) Survivors of meningococcal meningitis disease may have severe after effects of the disease, including mental retardation, hearing loss, and loss of limbs;

(4) College freshmen residing on campus in dormitories or residence halls have a risk of meningococcal meningitis disease over seven (7) times higher than do college students overall;

(5) The meningococcal meningitis disease vaccine has been shown to be eighty-five percent (85%) to ninety percent (90%) effective in producing antibodies against the most common strains of the disease; and

(6) The Centers for Disease Control and Prevention (CDC) recommends that college freshmen and their parents be educated about meningococcal meningitis disease and that vaccination should be made easily available to freshmen and undergraduate students who want to reduce their risk of disease.

SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) Each public or private educational institution that offers a postsecondary degree and has a residential campus shall provide vaccination information on meningococcal meningitis disease to full-time students living in resident housing.

(2) The vaccination information shall be contained in the student housing or enrollment application or lease document and shall include a space for the student to indicate whether or not the student has received the vaccination against meningococcal meningitis disease. If institutions provide electronic enrollment or registration to first-time students, the information required by this section may be provided or collected electronically.

(3) Vaccination information about meningococcal meningitis disease shall include detailed information on the risks of the disease and any recommendations issued by the National Centers for Disease Control and Prevention.

(4) The vaccination information obtained under this section that is in the possession of the educational institution is confidential and shall not be a public record.

(5) This section shall not be construed to require the educational institution or the Cabinet for Health Services to provide or pay for the meningococcal menigitis disease vaccination.

Approved April 22, 2004

CHAPTER 147

(HB 376)

AN ACT relating to the homelessness prevention pilot project.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) Subject to sufficient funding, the Cabinet for Health Services, the Justice Cabinet, and the Cabinet for Families and Children, in consultation with any other state agency as appropriate, shall develop and implement a homelessness prevention pilot project that offers institutional discharge planning on a voluntary basis to persons exiting from state-operated or supervised institutions involving mental health and foster care programs, and persons serving out their sentences in any state-operated prison in Oldham County.

(2) The primary goal of the project shall be to prepare a limited number of persons in a foster home under supervision by the Cabinet for Families and Children, state-operated prison in Oldham County under supervision by the Justice Cabinet, and mental health facility under supervision by the Cabinet for Health Services for return or reentry into the community, and to offer information about any necessary linkage of the person to needed community services and supports.

(a) The pilot project shall be jointly supported by each of the cabinets. One (1) office for the pilot project shall be located in a family resource center or Department for Community Based Services building in Jefferson County due to its urban population, and one (1) office shall be located in Clinton, Cumberland, McCreary, or Wayne County, due to its rural population. The pilot project office in Jefferson County shall serve persons intending to locate in Jefferson County who are being released from a mental health facility under supervision by the Cabinet for Health Services and persons

intending to locate in Jefferson County who are being released after serving out their sentences from any state-operated prison in Oldham County. The pilot project office in Clinton, Cumberland, McCreary, or Wayne County shall serve persons intending to locate in Clinton, Cumberland, McCreary, or Wayne County who are aging out of the foster care program following placement in Clinton, Cumberland, McCreary, or Wayne County.

(b) Within thirty (30) days following the effective date of this Act, the cabinets shall supply each pilot project director with the collection of information on available employment, social, housing, educational, medical, mental health, and other community services in the county. The information shall include but not be limited to the service area of each public and private provider of services, the capacity of each provider to render services to persons served by the pilot project, the fees of each provider, contact names and telephone numbers for each provider, and an emergency contact for each provider.

(c) Within thirty (30) days following the effective date of this Act, the cabinets and directors shall begin a program of education for each of the cabinet and foster home and mental health and appropriate state-operated prison facility staff who will participate in the development of a discharge plan for volunteer participants under this section.

(3) The pilot project shall operate on a voluntary basis. One (1) of each five (5) persons eligible for discharge or completing their sentence shall be offered the opportunity to participate in the pilot program. This offer shall be made at least six (6) months prior to discharge. There shall be a cap on the number of persons served in each office, to be determined by available funding and staffing requirements.

(a) The staff member designated as the homelessness prevention coordinator for each foster home or mental health facility shall maintain a file for each volunteer participant in the foster home or mental health facility, relating to the participant's employment, social, housing, educational, medical, and mental health needs. This file shall be updated from time to time as appropriate and pursuant to an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A that establishes standards for the discharge summary. The staff member designated as the homelessness prevention coordinator for the appropriate state-operated prison participating in the pilot project shall maintain a file containing appropriate forms completed and updated by each person voluntarily participating in the pilot project, relating to the information provided under subsection (6) of this section. All applicable privacy and confidentiality laws shall be followed in assembling and maintaining this file.

(b) Six (6) months prior to the expected date of discharge, the discharge coordinator for each foster home and mental health and state-operated prison facility shall contact the homelessness prevention director for Jefferson County or the homelessness prevention director for Clinton, Cumberland, McCreary, or Wayne County, as appropriate, about the pending release of the volunteer participant who is eligible for discharge from a foster home or mental health facility or who will have served out his or her sentence in a state-operated prison facility that is participating in the pilot project. The director shall visit the home or facility, as appropriate, to assist with the preparation of the final comprehensive discharge plan.

(c) The director and the discharge coordinator for each participating foster home and mental health and state-operated prison facility shall work together to develop a final comprehensive discharge plan that addresses the employment, health care, educational, housing, and other needs of the person to be released, subject to the consent of the person and the funding and staffing capabilities of the director. Information provided by the coordinator may include and be limited to, subject to the staffing and funding capabilities of the coordinator, information provided by the person to be released on a form or forms made available by the foster home or mental health or state-operated prison facility. The discharge plan shall contain but not be limited to the following:

1. Estimated discharge date from the foster home, state-operated prison facility, or mental health facility;

2. Educational background of the person to be released, including any classes completed or skills obtained by the person while in the foster home, state-operated prison facility, or mental health facility;

3. The person's medical and mental health needs;

4. Other relevant social or family background information;

5. A listing of previous attempts to arrange for post-release residence, employment, medical and mental health services, housing, education, and other community-based services for the person; and

6. Other available funding and public programs that may reimburse any services obtained from a provider listed in the discharge plan. Every effort shall be made in the discharge plan to refer the person to a provider that has agreed to an arranged public or private funding arrangement.

No discharge plan shall be completed unless the written consent, consistent with state and federal privacy laws, to compile the information and prepare the plan has been given by the person eligible for release who has volunteered to participate in the pilot program.

(4) The director shall assist with the completion of a final comprehensive discharge plan that may include, but need not be limited to, the following:

(a) Availability of appropriate housing, including but not limited to a twenty-four (24) month transitional program, supportive housing, or halfway house. Planning discharge to an emergency shelter is not appropriate to meet the housing needs of the person being discharged from foster care, a state-operated prison facility, or a mental health facility;

(b) Access to appropriate treatment services for participants who require follow-up treatment;

(c) Availability of appropriate employment opportunities, including assessment of vocational skills and job training; and

(d) Identification of appropriate opportunities to further education.

(5) Discharge planning shall be individualized, comprehensive, and coordinated with community-based services.

(a) Each discharge plan shall create a continuous, coordinated, and seamless system that is designed to meet the needs of the person.

(b) Staff of the foster home or facility and staff of community-based services providers shall be involved in the planning.

(c) Each facility shall utilize, wherever possible, community-based services within the facility to establish familiarity of the person residing in the facility with the community services.

(6) The Department of Corrections shall, through an administrative regulation promulgated in accordance with KRS Chapter 13A, develop a discharge plan that addresses the education; employment, technical, and vocational skills; and housing, medical, and mental health needs of a person who is to be released after serving out his or her sentence in a state-operated prison facility participating in the pilot project.

(7) Appropriate data about discharge placements and follow-up measures shall be collected and analyzed. The analysis shall be included in the interim and final reports of the pilot program specified in subsection (8) of this section.

(8) Each homelessness prevention director shall have regular meetings with appropriate state cabinet and agency staff to review the pilot project and make recommendations for the benefit of the program. Each director shall be assisted by a local advisory council composed of local providers of services and consumer advocates who are familiar with homelessness prevention issues. Priority for membership on the advisory council shall be given to existing resources and regional mental health and substance abuse advisory councils at the discretion of the director.

(9) Each cabinet shall collect data about the discharge plans, referrals, costs of services, and rate of recidivism related to the homelessness prevention program, and shall submit an annual report to the Governor and the Legislative Research Commission no later than October 1 that summarizes the data and contains recommendations for the improvement of the program. The annual report also shall be forwarded to the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disabilities, Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses, and the Kentucky Housing Corporation Homelessness Policy Council.

Section 2. The development and implementation of the homelessness prevention pilot project in this Act shall be subject to sufficient funding for this project as provided in the Executive Branch Budget Bill.

Approved April 22, 2004

CHAPTER 148

(HB 398)

AN ACT relating to school board elections.

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

Section 1. KRS 160.210 is amended to read as follows:

(1) (a) In independent school districts, the members of the school board shall be elected from the district at large. In county school districts, members shall be elected from divisions.

(b) If no candidate files a petition of nomination for a ***county***~~[local]~~ board of education opening pursuant to KRS 118.315~~[and 118.316]~~, the chief state school officer shall fill the new term of office ***for all openings that have no candidate filings under KRS 118.315*** by appointing a member to the local board who meets the residency requirement and the qualifications for office provided in KRS 160.180. The local board of education may make nominations and any person may nominate himself or another for the office.

(c) Unless a number of candidates equal to or greater than the number of positions to be filled file petitions for nomination for an independent board of education opening pursuant to KRS 118.315, the chief state school officer shall fill the new term of office for all openings that have no candidate filings under KRS 118.315 by appointing a member to the local board who meets the residency requirement and the qualifications for office provided in KRS 160.180. The local board of education may make nominations and any person may nominate himself or another for the office.

(2) The board of education of each county school district shall, not later than July 1, 1940, divide its district into five (5) divisions containing integral voting precincts and as equal in population insofar as is practicable. In first dividing the county district into divisions the board shall, if more than one (1) of its members reside in one (1) division, determine by lot which member from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in KRS 160.200 and 160.220 to 160.250.

(3) Any changes made in division boundary lines shall be to make divisions as equal in population and containing integral voting precincts insofar as is practical. No change may be made in division boundary lines less than five (5) years after the last change in any division lines, except in case of merger of districts, a change in territory due to annexation, or to allow compliance with KRS 117.055(2).

(4) (a) Notwithstanding the provisions of subsection (3) of this section, if one hundred (100) residents of a county school district division petition the Kentucky Board of Education stating that the school district divisions are not divided as nearly equal in population as can reasonably be expected, the chief state school officer shall cause an investigation to determine the validity of the petition, the investigation to be completed within thirty (30) days after receipt of the petition.

(b) If the investigation reveals the school district to be unequally divided according to population, the Kentucky Board of Education, upon the recommendation of the chief state school officer, shall order the local board of education to make changes in school district divisions as are necessary to equalize population within the five (5) school divisions.

(c) If any board fails to comply with the order of the Kentucky Board of Education within thirty (30) days or prior to August 1 in any year in which any members of the board are to be elected, members shall be elected from the district at large until the order of the Kentucky Board of Education has been complied with.

(d) No change shall be made in the boundary of any division under the provisions of this subsection after August 1 in the year in which a member of the school board is to be elected from any division.

(5) Notwithstanding the provisions of subsection (2) of this section, in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished, there shall be seven (7) divisions as equal in population as is practicable, with members elected from divisions. To be eligible to be elected from a division, a candidate must reside in that division. The divisions, based upon 1970 United States Census Bureau Reports on total population by census tracts for Jefferson County, Kentucky shall be as follows: Division One shall include census tracts 1-28; Division Two shall include census tracts 29-35, 47-53, 57-74, 80-84, 93, 129, 130; Division Three shall include census tracts 75-79, 85-88, 98-106, 107.01, 108; Division Four shall include census tracts 121.01, 123-128; Division Five shall include census tracts 36-46, 56, 90, 120, 121.02, 122; Division Six shall include census tracts 54, 55, 91, 92, 94, 95, 110.02, 113, 114, 117.01, 117.02, 118, 119; Division Seven shall include census tracts 89, 96, 97, 107.02, 109, 110.01, 111, 112, 115, 116, 117.03, 131, 132. The terms of the members to be elected, KRS 160.044 notwithstanding, shall be four (4) years and the election for the initial four (4) year terms shall be as follows: The election of the members from Divisions Two, Four and Seven shall be held at the next regular November election following the effective date of the merger pursuant to KRS 160.041, and the election of the members from Divisions One, Three, Five and Six shall be held at the regular November election two (2) years thereafter.

(6) In counties containing cities of the first class, responsibility for the establishment or the changing of school board division boundaries shall be with the local board of education, subject to the review and approval of the county board of elections. Where division and census tract boundaries do not coincide with existing election precinct boundaries, school board divisions shall be redrawn to comply with precinct boundaries. In no instance shall precinct boundaries be redrawn nor shall a precinct be divided to accommodate the drawing of school board division lines. Precinct boundaries nearest existing school board division boundaries shall become the new division boundary. All changes under this statute shall be completed on or before January 1, 1979, and on or before January 1 in any succeeding year in which a member of the school board is to be elected from any division. A record of all changes in division lines shall be kept in the offices of the county board of education and the county board of elections. The board of education shall publish all changes pursuant to KRS Chapter 424. A copy of the newspaper in which the notice is published shall be filed with the chief state school officer within ten (10) days following its publication.

Approved April 22, 2004

CHAPTER 149

(HB 400)

AN ACT relating to vital statistics.

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

Section 1. KRS 213.141 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, the cabinet shall prescribe by regulation a fee not to exceed five dollars ($5), to be paid for certified copies of certificates or records, or for a search of the files or records when no copy is made, or for copies or information provided for research, statistical, or administrative purposes.

(2) The cabinet shall prescribe by administrative regulation pursuant to KRS Chapter 13A a fee not to exceed ten dollars ($10) to be paid for a certified copy of a record of a birth, three dollars ($3) of which shall be used by the Cabinet for Health Services or the Cabinet for Families and Children for the sole purpose of contracting for the operation of private, not-for-profit, self-help, education, and support groups for parents who want to prevent or cease physical, sexual, or mental abuse of children, and one dollar ($1) of which shall be used by the Division of Maternal and Child Health to pay for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases listed in KRS 205.560(1)(c), if:

(a) The amino acid modified preparations or low-protein modified food products are prescribed for the therapeutic treatment of inherited metabolic diseases listed in KRS 205.560(1)(c) and are administered under the direction of a physician; and

(b) The affected person's amino acid modified formula and foods are not covered under any public or private health benefit plan.

(3) Fees collected under this section by the state registrar shall be used to help defray the cost of administering the system of vital statistics.

(4) ***(a)*** No fee or compensation shall be allowed or paid for furnishing certificates of birth or death required in support of any claim against the government for compensation, insurance, back pay, or other allowances or benefits for any person who has at any time served as a member of the Army, Navy, Marine Corps, or Air Force of the United States.

(b) No fee or compensation shall be allowed or paid for furnishing a certificate of birth to a member of the Kentucky National Guard who has received deployment orders during the sixty (60) days prior to the furnishing of the certificate.

(5) The cabinet shall notify the State Board of Elections monthly of the name, address, birthdate, sex, race, and Social Security number of residents of the Commonwealth who died during the previous month. This data shall include only those persons who were over the age of eighteen (18) years at the date of death. No fee or compensation shall be allowed for furnishing these lists.

Approved April 22, 2004

CHAPTER 150

(HB 404)

AN ACT relating to land use.

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

Section 1. KRS 100.111 is amended to read as follows:

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

(1) "Administrative official" means any department, employee, or advisory, elected, or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and, if delegated, any provision of any housing or building regulation or any other land use control regulation;

(2) "Agricultural use" means the use of***:***

(a) A tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the~~[above]~~ agricultural use on the tract, but not including residential building development for sale or lease to the public***;***

(b) ~~[, and shall also include,]~~Regardless of the size of the tract of land used, small wineries licensed under KRS 243.155, and farm wineries licensed under the provisions of KRS 243.156;

(c) A tract of at least five (5) contiguous acres used for the following activities involving horses:

1. Riding lessons;

2. Rides;

3. Training;

4. Projects for educational purposes;

5. Boarding and related care; or

6. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter

230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations; or

(d) A tract of land used for the following activities involving horses:

1. Riding lessons;

2. Rides;

3. Training;

4. Projects for educational purposes;

5. Boarding and related care; or

6. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations.

This paragraph shall only apply to acreage that was being used for these activities before the effective date of this Act;

(3) "Board" means the board of adjustment unless the context indicates otherwise;

(4) "Citizen member" means any member of the planning commission or board of adjustment who is not an elected or appointed official or employee of the city, county, or consolidated local government;

(5) "Commission" means planning commission;

(6) "Conditional use" means a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;

(7) "Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:

(a) A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and

(b) A statement of the specific conditions which must be met in order for the use to be permitted;

(8) "Development plan" means written and graphic material for the provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant;

(9) "Fiscal court" means the chief body of the county with legislative power, whether it is the fiscal court, county commissioners, or otherwise;

(10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky Plumbing Code, and any other building or structural code promulgated by the Commonwealth or by its political subdivisions;

(11) "Legislative body" means the chief body of the city or consolidated local government with legislative power, whether it is the board of aldermen, the general council, the common council, the city council, the board of commissioners, or otherwise; at times it also implies the county's fiscal court;

(12) "Mayor" means the chief elected official of the city or consolidated local government whether the official designation of his office is mayor or otherwise;

(13) "Nonconforming use or structure" means an activity or a building, sign, structure, or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located;

(14) "Planning operations" means the formulating of plans for the physical development and social and economic well-being of a planning unit, and the formulating of proposals for means of implementing the plans;

(15) "Planning unit" means any city, county, or consolidated local government, or any combination of cities, counties, or parts of counties, or parts of consolidated local governments engaged in planning operations;

(16) "Plat" means the map of a subdivision;

(17) "Political subdivision" means any city, county, or consolidated local government;

(18) "Several" means two (2) or more;

(19) "Public facility" means any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including but not limited to libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries;

(20) "Street" means any vehicular way;

(21) "Structure" means anything constructed or made, the use of which requires permanent location in or on the ground or attachment to something having a permanent location in or on the ground, including buildings and signs;

(22) "Subdivision" means the division of a parcel of land into three (3) or more lots or parcels except in a county containing a city of the first, second, or third class or in an urban-county government or consolidated local government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section;

(23) "Unit" means planning unit; and

(24) "Variance" means a departure from dimensional terms of the zoning regulation pertaining to the height, width, length, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

Section 2. KRS 100.203 is amended to read as follows:

Cities and counties may enact zoning regulations which shall contain:

(1) A text, which shall list the types of zones which may be used, and the regulations which may be imposed in each zone, which must be uniform throughout the zone. In addition, the text shall make provisions for the granting of variances, conditional use permits, and for nonconforming use of land and structures, and any other provisions which are necessary to implement the zoning regulation. The city or county may regulate:

(a) The activity on the land, including filling or excavation of land, and the removal of natural resources, and the use of watercourses, and other bodies of water, as well as land subject to flooding;

(b) The size, width, height, bulk, location of structures, buildings and signs;

(c) Minimum or maximum areas or percentages of areas, courts, yards, or other open spaces or bodies of water which are to be left unoccupied, and minimum distance requirements between buildings or other structures;

(d) Intensity of use and density of population floor area to ground area ratios, or other means;

(e) Districts of special interest to the proper development of the community, including, but not limited to, exclusive use districts, historical districts, planned business districts, planned industrial districts, renewal, rehabilitation, and conservation districts; planned neighborhood and group housing districts;

(f) Fringe areas of each district, by imposing requirements which will make it compatible with neighboring districts; and

(g) The activities and structures on the land at or near major thoroughfares, their intersections, and interchanges, and transportation arteries, natural or artificial bodies of water, public buildings and public grounds, aircraft, helicopter, rocket and spacecraft facilities, places having unique interest or value, flood plain areas, and other places having a special character or use affecting or affected by their surroundings;

(2) The text may provide that the planning commission, as a condition to the granting of any zoning change, may require the submission of a development plan, which shall be limited to the provisions of the definition contained in KRS 100.111(8). Where agreed upon, this development plan shall be followed. As a further condition to the granting of a zoning change, the planning commission may require that substantial construction be initiated within a certain period of time of not less than one (1) year; provided that such zoning change shall not revert to its original designation unless there has been a public hearing;

(3) A map, which shall show the boundaries of the area which is to be zoned, and the boundaries of each zone;

(4) Text provisions to the effect that land which is used for agricultural purposes shall have no regulations except that:

(a) Setback lines may be required for the protection of existing and proposed streets and highways;

(b) All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated;~~[and]~~

(c) Mobile homes and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning, building, and certificates of occupancy; ***and***

(d) The uses set out in paragraph (c) of subsection (2) of Section 1 of this Act may be subject to regulation as a conditional use;

(5) The text may empower the planning commission to hear and finally decide applications for variances or conditional use permits when a proposed development requires a map amendment and one (1) or more variances or conditional use permits;

(6) In any regulation adopted pursuant to subsection (5) of this section:

(a) The text shall provide that the planning commission shall assume all powers and duties otherwise exercised by the board of adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251, in a circumstance provided for by subsection (5) of this section; and

(b) The text shall provide that the applicant for the map amendment, at the time of the filing of the application for the map amendment, may elect to have any variances or conditional use permits for the same development to be heard and finally decided by the planning commission at the same public hearing set for the map amendment, or by the board of adjustments as otherwise provided for in this chapter;

(7) Any judicial proceeding to appeal the planning commission action authorized by subsection (5) of this section in granting or denying any variance or conditional use permit shall be taken pursuant to KRS 100.347(2);

(8) In urban-county governments, in addition to any other powers permitted or required to be exercised by this chapter, the text of the zoning regulations may provide, as a condition to granting a map amendment, that the planning unit may:

(a) Restrict the use of the property affected to a particular use, or a particular class of use, or a specified density within those permitted in a given zoning category;

(b) Impose architectural or other visual requirements or restrictions upon development in areas zoned historic; and

(c) Impose screening and buffering restrictions upon the subject property;

The text shall provide the method whereby such restrictions or conditions may be imposed, modified, removed, amended and enforced.

Approved April 22, 2004

CHAPTER 151

(HB 406)

AN ACT relating to fire protection districts.

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

Section 1. KRS 75.040 is amended to read as follows:

(1) ***(a)*** Upon the creation of a fire protection district or a volunteer fire department district as provided in KRS 75.010 to 75.031, the trustees of a district are authorized to establish and operate a fire department and emergency ambulance service as provided in subsection (6) of this section and to levy a tax upon the property in the district, including that property within cities in a fire protection district or a volunteer fire department district, as provided by KRS 75.010(2) provided that the property is subject to county tax, and not exceeding ten cents ($0.10) per one hundred dollars ($100) of valuation as assessed for county taxes, for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire department or to make contracts for fire protection for the districts as provided in KRS 75.050. The rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.

(b) A fire protection district or a volunteer fire department district that establishes and operates an emergency ambulance service and is the primary service provider in the district may levy a tax upon the property in the district not to exceed twenty cents ($0.20) per one hundred dollars ($100) of valuation as assessed for county taxes, for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire department and emergency ambulance service or to make contracts for fire protection for the districts as provided in KRS 75.050. The rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.

(2) The establishment, maintenance, and operation of a fire protection district or volunteer fire department district shall include, but not be limited to, the following activities:

(a) Acquisition and maintenance of adequate fire protection facilities;

(b) Acquisition and maintenance of adequate firefighting equipment;

(c) Recruitment, training, and supervision of firefighters;

(d) Control and extinguishment of fires;

(e) Prevention of fires;

(f) Conducting fire safety activities;

(g) Payment of compensation to firefighters and providing the necessary support and supervisory personnel;

(h) Payment for reasonable benefits or a nominal fee to volunteer firefighters when benefits and fees do not constitute wages or salaries under KRS Chapter 337 and are not taxable as income to the volunteer firefighters under Kentucky or federal income tax laws; and

(i) The use of fire protection district equipment for activities which are for a public purpose and which do not materially diminish the value of the equipment.

(3) The property valuation administrator of the county or counties involved, with the cooperation of the board of trustees, shall note on the tax rolls the taxpayers and valuation of the property subject to such assessment. The county clerk shall compute the tax on the regular state and county tax bills in such manner as may be directed by regulation of the revenue cabinet.

(4) Such taxes shall be subject to the same delinquency date, discounts, penalties, and interest as are applied to the collection of ad valorem taxes and shall be collected by the sheriff of the county or counties involved and accounted for to the treasurer of the district. The sheriff shall be entitled to a fee of one percent (1%) of the amount collected by him.

(5) Nothing contained in this subsection shall be construed to prevent the trustees of a fire protection district located in a city or county which provides emergency ambulance service from using funds derived from taxes for the purpose of providing supplemental emergency medical services so long as the mayor of the city or the

county judge/executive of the county, as appropriate, certifies to the trustees in writing that supplemental emergency medical services are reasonably required in the public interest. For the purposes of this subsection, "supplemental emergency medical services" may include EMT, EMT-D, and paramedic services rendered at the scene of an emergent accident or illness until an emergency ambulance can arrive at the scene.

(6) The trustees of those fire protection districts or volunteer fire department districts whose districts or portions thereof do not receive emergency ambulance services from an emergency ambulance service district or, whose districts are not being served by an emergency ambulance service operated or contracted by a city or county government, may develop, maintain, and operate or contract for an emergency ambulance service as part of any fire department created pursuant to this chapter. No taxes levied pursuant to subsection (1) of this section shall be used to develop, maintain, operate, or contract for an emergency ambulance service until the tax year following the year the trustees of the district authorize the establishment of the emergency ambulance service.

Section 2. KRS 75.015 is amended to read as follows:

(1) A fire protection subdistrict may be formed according to the provisions of this section. A fire protection subdistrict shall:

(a) Be located within the territorial limits of a fire protection district or volunteer fire department district;

(b) Have a continuous boundary; and

(c) Be managed by the board of trustees of the district, which shall:

1. Impose an ad valorem tax on property in the subdistrict in addition to the ad valorem tax the board imposes on property in the district as a whole; and

2. Expend the revenue from that additional tax on improved fire protection facilities and services for the subdistrict.

(2) Persons desiring to form a fire protection subdistrict shall present a petition to the fiscal court clerk and to each member of the fiscal court. The petition shall be accompanied by a map and a metes and bounds description or other description which specifically identifies the boundaries of the proposed subdistrict. The petition shall be signed by more than sixty percent (60%) of the persons who both:

(a) Live within the proposed subdistrict; and

(b) Own property that is located within the proposed subdistrict and is subject to taxation by the district under KRS 75.040.

(3) The petition shall contain the name and address of each petitioner and the address of each petitioner's property that is located within the proposed subdistrict. It shall be in substantially the following form: "The following owners of property located within (insert the name of the fire protection district or volunteer fire department district) hereby petition the fiscal court to form a fire protection subdistrict located at (insert a brief description of the location of the proposed subdistrict). The board of trustees of (insert the name of the fire protection district or volunteer fire department district) shall have the authority to impose a special ad valorem tax of (insert amount, not to exceed the maximum allowed under subsection (6) of this section) on each one hundred dollars ($100) worth of property assessed for local taxation in the subdistrict, in order to provide enhanced fire protection for the subdistrict. This tax shall be in addition to the ad valorem tax imposed by the trustees on the district as a whole."

(4) Upon receipt of the petition, the fiscal court shall hold a hearing and provide notification in the manner required for creation of a taxing district under KRS 65.182(2) to (5). Following the hearing, the fiscal court shall set forth its written findings of fact and shall approve or disapprove the formation of the subdistrict. The creation of the subdistrict shall be of legal effect only upon the adoption of an ordinance in accordance with the provisions of KRS 67.075 to 67.077. A certified copy of the ordinance creating the subdistrict shall be filed with the county clerk.

(5) Upon the creation of a fire protection subdistrict, the trustees shall levy a tax, not to exceed the amount stated in the petition, on the property in the subdistrict, for the purpose of improving fire protection facilities and services in the subdistrict.

(6) The tax levied under this section, combined with the tax for fire and emergency services levied on the entire district under KRS 75.040, shall not exceed*:*

(a) Ten cents ($0.10) per one hundred dollars ($100) of valuation as assessed for county taxes ***if neither the fire district nor the fire subdistrict operate an emergency ambulance service under the provisions of Section 1 of this Act; or***

(b) Twenty cents ($0.20) per one hundred dollars ($100) of valuation as assessed for county taxes if either the fire district or fire subdistrict operates an emergency ambulance service under the provisions of Section 1 of this Act.

At no time shall the trustees increase either of these taxes so that the combined total exceeds this limit.

(7) The county clerk shall add the levy to the tax bills of the affected property owners. For taxing purposes, the effective date of the tax levy shall be January 1 of the year following the certification and creation of the subdistrict. The tax shall be administered in the same manner as the tax on the entire district under KRS 75.040(2) and (3).

(8) The board of trustees shall not reduce the tax rate imposed on property in the district as a whole as a result of receiving extra revenue from the additional tax on property in the subdistrict. The trustees shall expend the extra revenue solely on improving fire protection facilities and services in the subdistrict and shall not expend the extra revenue on facilities or services that are shared by the entire district.

(9) Fire subdistrict taxes shall be placed on the tax bill in a place separate from the bill of the fire district tax so that ratepayers can ascertain the amount of each tax and its rate.

(10) The sheriff shall separately account to the fire district for the funds collected for each subdistrict within the fire district.

(11) Fire districts shall maintain a separate accounting of all subdistrict funds, and if there is more than one (1) subdistrict, a separate accounting for each subdistrict.

Approved April 22, 2004

CHAPTER 152

(HB 427)

AN ACT relating to the taxing authority of emergency services boards.

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

Section 1. KRS 65.670 is amended to read as follows:

(1) (a) In order to ensure the delivery of adequate services to the community or communities, the emergency services board may levy an ad valorem tax not to exceed ten cents ($0.10) per one hundred dollars ($100) of the assessed valuation of all property in the district. ***The emergency services board may levy this ad valorem tax on the property of each taxpayer served by each district whose board is merged into the emergency services board.*** The emergency services board ad valorem tax shall be collected by the sheriff of each member county in the same manner as county ad valorem taxes. The sheriff shall be entitled to a fee of four percent (4%) of the amount of the tax collected; and

(b) The emergency services board may, in addition to the ad valorem tax in paragraph (a) of this subsection, charge fees necessary to further defray the costs of its operation.

(2) Tax and license fee revenues derived from this section shall be used only for the services described in KRS 65.660 or 65.662.

(3) The assets and liabilities of the special districts under the jurisdiction of the emergency services board shall be maintained separately, but shall be managed by the emergency services board.

Approved April 22, 2004

CHAPTER 153

(HB 438)

AN ACT relating to the sale or other disposition of city or county property.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 82 IS CREATED TO READ AS FOLLOWS:

(1) A city may sell or otherwise dispose of any of its real or personal property.

(2) Before selling or otherwise disposing of any real or personal property, the city shall make a written determination setting forth and fully describing:

(a) The real or personal property;

(b) Its intended use at the time of acquisition;

(c) The reasons why it is in the public interest to dispose of it; and

(d) The method of disposition to be used.

(3) Real or personal property may be:

(a) Transferred, with or without compensation, to another governmental agency;

(b) Transferred, with or without compensation, for economic development purposes;

(c) Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);

(d) Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b); or

(e) Sold by sealed bids in accordance with the procedure for sealed bids under KRS 45A.365(3) and (4).

(4) If a city receives no bids for the real or personal property, either at public or electronic auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the city. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made.

(5) Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the city.

Section 2. KRS 67.0802 is amended to read as follows:

(1) A county may sell or otherwise dispose of any of its real or personal property.

(2) Before selling or otherwise disposing of any real or personal property, the county shall make a written determination setting forth and fully describing:

(a) The real or personal property;

(b) Its intended use at the time of acquisition;

(c) The reasons why it is in the public interest to dispose of it; and

(d) The method of disposition to be used.

(3) Real or personal property may be:

(a) Transferred, with or without compensation, to another governmental agency***;***~~[,]~~

(b) Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);

(c) Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b); or

(d) Sold by sealed bids in accordance with the procedure for sealed bids under KRS 45A.365(3) and (4).

(4) If a county receives no bids for the real or personal property, either at public ***or electronic*** auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by

the county. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made.

(5) Any compensation resulting from the disposal of this real or personal property shall be transferred to the general fund of the county.

Approved April 22, 2004

CHAPTER 154

(HB 447)

AN ACT relating to the relocation of utilities in conjunction with a highway construction project.

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

Section 1. KRS 177.035 is amended to read as follows:

(1) If the~~[Kentucky State]~~ department~~[of Highways]~~ determines that it is necessary for any fireplugs, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances, belonging to any municipality or a municipally-owned utility, or any water district established pursuant to KRS Chapter 74, any water association established pursuant to KRS Chapter 273, any local school district, or any sanitation district established pursuant to KRS Chapter 220, to be removed or relocated on, along, over, or under a highway, in order to construct, reconstruct, relocate, or improve any highway, the municipality, municipally-owned utility, water district, local school district, or the sanitation district shall relocate or remove them in accordance with the order of the department~~[of Highways]~~. The costs and expenses of relocation or removal required by this section, including the costs of installing facilities in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the department~~[of Highways]~~ as a part of the cost of improving or constructing highways.

(2) The term "utility" as used in subsections (3) to (5) of this section shall mean any utility not referenced in subsection (1) of this section, and the term shall mean any utility as defined in KRS 278.010.

(3) If a utility has facilities located within the public right-of-way pursuant to KRS 416.140, the department may reimburse the utility the cost to relocate the utility's facilities to a location either within or without the public right-of-way if the relocation is required due to a highway construction project, subject to the following conditions:

(a) The utility shall be required to submit to the department for the department's approval a plan for relocating the utility's facilities. The plan shall include:

1. A proposal for the relocation, including plans and a cost estimate developed in accordance with department guidelines; and

2. A reasonable schedule of calendar days for completing the relocation that has been agreed to by the department. If due to circumstances beyond the utility's control, the utility or the department cannot meet the specified completion date included in the plan, the department may grant an extension to the utility for a time period agreed upon by both parties;

(b) The utility shall be required to have either:

1. Entered into a written agreement with the department to include the relocation of the facilities as part of the department's construction contract. The utility may, with the approval of the department, perform a portion of the relocation work under this subparagraph with contractors or employees of the utility; or

2. Entered into a written agreement with the department for the utility to remove all of its facilities that conflict with the highway construction project, as determined by the department, prior to letting the construction contract. The utility may perform a portion or all of the relocation work under this subparagraph with contractors or employees of the utility.

(4) A utility that enters into an agreement with the department under the provisions of subsection (3)(b) of this section shall be required to complete the relocation work in compliance with the schedule included in the plan required to be submitted under subsection (3)(a) of this section. The provisions of this subsection shall

not apply if the department fails to undertake the highway construction project within the time period specified in the agreement, and in this instance, the department shall be required to reimburse the utility any allowable cost the utility has incurred to relocate its facilities in compliance with the plan approved by the department.

(5) The department shall reimburse a utility as authorized in subsection (3) of this section if the department is satisfied that the utility's facilities have been relocated in conformance with the plan approved by the department. The utility shall have twelve (12) months from the completion date of the relocation, according to the schedule of calendar days, to submit a reimbursement request for relocation costs to the department.

(6) The provisions of this section shall not amend or affect in any way the provisions of KRS 179.265.

Approved April 22, 2004

CHAPTER 155

(HB 460)

AN ACT relating to waiver of tuition fees for dependents of veterans.

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

Section 1. KRS 164.507 is amended to read as follows:

(1) The nonremarried spouse, regardless of age, and any child, stepchild, or orphan, ***under the age of*** ~~[between the ages of seventeen (17) and]~~ twenty-three (23), of a deceased veteran shall not be required to pay any matriculation or tuition fees upon admission to any state-supported university, junior college, or vocational training institute for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion, if the deceased parent or spouse:

(a) 1. Served in the Armed Forces of the United States during a national emergency, wars declared by Congress, or actions of the United Nations; or

2. Died while on active duty in the Armed Forces of the United States regardless of wartime service; or

3. Died as a result of a service-connected disability acquired while on active duty with the Armed Forces of the United States regardless of wartime service; and

(b) 1. Was a resident of the Commonwealth of Kentucky at the time of death; or

2. Was married to a resident of Kentucky at the time of death; and

3. If discharged, was under honorable conditions.

(2) In order to obtain the benefits conferred by subsection (1), the parent-child relationship must be shown by birth certificate, adoption papers, marriage certificate, or other documentary evidence. A stepchild must have been a member of the veteran's household at the time of the veteran's death. The spousal relationship must be shown by a marriage certificate or other documentary evidence. The parent's or spouse's service and the cause of death must be evidenced by certification from the records of the Kentucky Department of Military Affairs, the Veterans Administration Records, or the Department of Defense of the United States. In the event one so admitted to a state-supported university, junior college, or vocational training institution under this section shall have obtained a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the applicant in the payment of incidental expenses of attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the applicant.

Section 2. KRS 164.515 is amended to read as follows:

(1) The spouse, regardless of age, and any child, stepchild, or orphan***, under the age of twenty-three (23),*** of a permanently and totally disabled member of the Kentucky National Guard or Reserve Component injured while on state active duty, active duty for training, or inactive duty training, or a permanently and totally disabled war veteran, or a one hundred percent (100%) service-connected disabled veteran regardless of wartime service, or prisoner of war or member of the Armed Services declared missing in action~~[, who is over the age of seventeen (17) and under the age of twenty-three (23)]~~ shall not be required to pay any matriculation

or tuition fees upon his admission to any state-supported institution of higher education or to any state-supported vocational training school for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.

(2) To be entitled to benefits under this section the parent or stepparent of the child claiming benefits if living must be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the United States Veterans Administration or the Department of Defense. If the veteran is deceased, the claim to benefits is to be based on the rating held by the veteran at the time of death or if a prisoner of war or missing in action, must have been declared as such by the Department of Defense. Members of the Kentucky National Guard must be rated permanently and totally disabled as provided in KRS Chapter 342. The parent's, stepparent's, or spouse's service and rating must be evidenced by certification from the records of the Kentucky Department of Military Affairs, Veterans Administration Records, or the Department of Defense of the United States.

(3) The parent-child relationship must be shown by birth certificate, legal adoption papers, marriage certificate, or other documentary evidence. A stepchild must be a member of the veteran's household. The spousal relationship must be shown by a marriage certificate or other documentary evidence.

(4) To entitle a spouse, child, stepchild, or orphan to benefit under this section the disabled member of the National Guard or Reserve Component veteran living or deceased must have served on state active duty, active duty for training, or inactive duty training or active duty with the Armed Forces of the United States, and his discharge must have been under honorable conditions. He must be a resident or, if deceased, have been a resident of the Commonwealth of Kentucky.

(5) No provision of this section shall serve to deny these benefits to an eligible spouse, child, stepchild, or orphan, who enlists, or who fulfills a military obligation, in the Armed Forces of the United States and is discharged under honorable conditions; the period of time spent in the military service to be compensated by like time, beyond the age of twenty-three (23) years if required, but not in excess of the period of enrollment as set forth in subsection (1) of this section.

(6) The marriage of an eligible child, stepchild, or orphan, shall not serve to deny full entitlement to the benefits provided in this section.

Approved April 22, 2004

CHAPTER 156

(HB 471)

AN ACT relating to consumer protection.

WHEREAS, the General Assembly finds that in the interest of public policy and protecting Kentucky consumers, a prohibition on price gouging during a state of emergency is warranted and passage of this Act is necessary;

NOW, THEREFORE,

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act unless the context requires otherwise:

(1) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property;

(2) "Consumer food item" means any article used or intended for use for food, drink, confection, or condiment by a person or animal;

(3) "Emergency supplies" includes but is not limited to water, flashlights, radios, batteries, candles, blankets, soap, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers;

(4) "Gasoline" means any fuel used to power any motor vehicle or power tool;

(5) "Goods" has the same meaning as in KRS 355.2-105;

(6) "Housing" means any rental housing and includes any housing provided by a hotel or motel;

(7) "Medical supplies" includes but is not limited to prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products;

(8) "Person" has the same meaning as in KRS 446.010;

(9) "Repair or reconstruction services" means services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a natural or man-made disaster or emergency resulting from an event referred to in subsection (11) of this section;

(10) "Services" means work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto;

(11) "State of emergency" means a natural or man-made disaster resulting from a tornado, earthquake, flood, fire, riot, storm, act of war, threat of war, military action, the time of instability following a terrorist attack, or any other event for which a state of emergency has been proclaimed by the President of the United States or declared by the Governor. It shall also include the duration of a Condition Red as declared by the United States Department of Homeland Security under the Homeland Security Advisory System; and

(12) "Transportation, freight, and storage services" means any service that is performed by a person that contracts to move, store, or transport personal or business property or rents equipment for those purposes.

SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) (a) When a Condition Red has been declared by the United States Department of Homeland Security under the Homeland Security Advisory System or the Governor has declared a state of emergency under KRS 39A.100, the Governor may implement this section for the duration of the declaration and the area for which the declaration was issued.

(b) No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller. Goods and services to which this section applies are:

1. Consumer food items;

2. Goods or services used for emergency cleanup;

3. Emergency supplies;

4. Medical supplies;

5. Home heating oil;

6. Building materials;

7. Housing;

8. Transportation, freight, and storage services; and

9. Gasoline or other motor fuels.

(c) A person who increases a price does not violate this subsection if the price increase is attributable to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service.

(2) The provisions of this section may be extended for an additional period, not to exceed thirty (30) days, by the Governor if necessary to protect the lives, property, or welfare of the citizens.

(3) If a person sold or rented a good or service listed in subsection (1) of this section at a reduced price in the thirty (30) days prior to the Governor's implementation of this section, the price at which that person usually sells or rents the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.

(4) If a person did not sell or rent or offer to sell or rent a good or service listed in subsection (1) of this section prior to the Governor's implementation of this section, the price at which a good or service was generally available in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

Upon the Governor's implementation of the provisions of Section 2 of this Act, renewal of the implementation, or termination of the implementation, the Division of Emergency Management shall immediately notify the public and those registered with the division for the purpose of receiving notice of the implementation, renewal, or termination. The division shall notify the public by any means available, including the division's Web site, news media, and electronic mail. Any person or trade association may register with the division for the purpose of receiving notification.

SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) A willful violation of Section 2 of this Act is punishable by a civil penalty of an amount not to exceed five thousand dollars ($5,000) for the first violation and an amount not to exceed ten thousand dollars ($10,000) for each subsequent violation.

(2) All of the remedies, powers, and duties provided by KRS Chapter 367 shall apply with equal force and effect to an act declared unlawful by Section 2 of this Act.

(3) Nothing in Sections 1 to 4 of this Act shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General which he or she is authorized to exercise or perform under any other provision of law.

Approved April 22, 2004

CHAPTER 157

(HB 508)

AN ACT relating to insurance.

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

Section 1. KRS 304.14-650 is amended to read as follows:

As used in KRS 304.14-650 to 304.14-675, "short-term nursing home insurance policies" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for less than twelve (12) consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one (1) or more necessary or medically necessary diagnostic, preventative, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital unless the hospital or unit is licensed or certified to provide services in a skilled nursing facility, extended care facility, intermediate care facility, convalescent nursing home, personal care facility, home health care agency, adult day care facility, and assisted living facility. This term shall also include a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. Short-term nursing home insurance policies may be issued by insurers, fraternal benefit societies, nonprofit hospitals, medical-surgical, dental, and health services corporations, health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issued life or health insurance. Short-term nursing home insurance policies shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity, major medical expense coverage, disability income or related-asset protection coverage, accident only coverage, specified disease or specified accident coverage~~[, or limited benefit coverage]~~.

Section 2. KRS 304.17A-245 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, an insurer delivering or issuing a health benefit plan subject to this subtitle~~[or a health insurance policy]~~ shall give the policyholder or contract holder at least thirty (30) days' advance written notice of cancellation. The notice shall be mailed by regular United States first class mail to the policyholder's or contract holder's last address as shown by the records of the insurer. If premium has been paid, the insurer shall pay all claims through the conclusion of the thirty (30) day notice period, except for as provided in KRS 304.14-110.

(2) If cancellation is for nonpayment of premium, the insurer shall give the policyholder or contract holder at least thirty (30) days' written notice of cancellation. The cancellation shall be mailed by regular United States first class mail. If premium is not paid at the conclusion of the thirty (30) day grace period, the policy automatically terminates to the last date through which premium was paid. The insurer shall clearly state, in the thirty (30)

day notice of termination, that if premium is not received by the end of the thirty (30) day grace period, the policy automatically terminates to the last date through which premium was paid.

(3) If the group policy has been canceled, the insurer shall notify each group member of his right to conversion pursuant to KRS 304.18-110 within fifteen (15) business days after the end of the grace period. On and after January 1, 2001, every insurer offering group health insurance coverage in the Commonwealth shall include in its contract with group policyholders or contract holders, regardless of the situs of the contract, a provision requiring the group policyholder or contract holder to mail promptly to each person covered under the group policy or contract a legible, true copy of any notice of cancellation of the group coverage which may be received from the insurer and to provide promptly to the insurer proof of that mailing and the date thereof. The notice of cancellation mailed by the group policyholder or contract holder to each person covered under the group policy or contract shall include information regarding the conversion rights of covered persons upon termination of the group policy or contract. This information shall be in clear and easily understandable language.

(4) All group contracts shall include an automatic termination provision if premium amounts are not received by the end of the grace period.

(5) In the event of cancellation, the insurer shall return promptly the unearned portion of any premium paid. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(6) If the insurer fails to provide the thirty (30) days' notice required by this section, the coverage shall remain in effect at the existing premium until thirty (30) days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.

(7) In the case of nonpayment of premium, all group contracts shall include an insurer's reinstatement policy for a contract holder or policyholder. An insurer shall not deny a contract holder or policyholder reinstatement based on any health-related factor listed in KRS 304.17A-200 or consideration of medical loss ratio.

Section 3. KRS 304.17A-527 is amended to read as follows:

(1) A managed care plan as defined in KRS 304.17A-500 shall file with the commissioner sample copies of any agreements it enters into with providers for the provision of health care services. The commissioner shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements and contracts entered into or renewed after July 15, 2002, shall include the following:

(a) A hold harmless clause that states that the provider may not, under any circumstance, including:

1. Nonpayment of moneys due the providers by the managed care plan,

2. Insolvency of the managed care plan, or

3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;

(b) A continuity of care clause that states that if an agreement between the provider and the managed care plan is terminated for any reason, other than a quality of care issue or fraud, the ***insurer***~~[provider]~~ shall continue to provide services and reimburse the provider in accordance with the agreement until the subscriber, dependent of the subscriber, or the enrollee is discharged from an inpatient facility, or the active course of treatment is completed, whichever time is greater, and in the case of a pregnant woman, services shall continue to be provided through the end of the post-partum period if the pregnant woman is in her fourth or later month of pregnancy;

(c) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the managed care plan;

(d) A clause stating that, upon request, the insurer shall provide the provider with specific fees for requested codes applicable to the compensation that the provider will receive under the contract with the insurer within thirty (30) days of the date of such request; and

(e) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide their licensed health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the managed care plan or subscriber or enrollee directly for the subcontracted services, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the commissioner in accordance with this subsection.

(2) An insurer that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the commissioner. The insurer shall also file the following information regarding the risk-sharing arrangement:

(a) The number of enrollees affected by the risk-sharing arrangement;

(b) The health care services to be provided to an enrollee under the risk-sharing arrangement;

(c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;

(d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with KRS 304.17A-500 to 304.17A-590 in exercising any delegated administrative functions; and

(e) The insurer's oversight and compliance plan regarding the standards and method of review.

(3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The commissioner shall have access to a specific risk sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the department shall be considered to be a trade secret and shall not be subject to KRS 61.872 to 61.884.

Section 4. KRS 304.38-191 is amended to read as follows:

Any group policy, group plan, or group contract issued, delivered, or renewed by a health maintenance organization shall include ***continuation rights for certificate holders, pursuant to KRS 304.18-110, and*** conversion~~[and continuation]~~ rights for certificate holders equal to that provided in KRS ***304.18-114***~~[304.18-110]~~ subject to the minimum benefits specified in KRS 304.18-120.

Section 5. KRS 304.10-050 is amended to read as follows:

At the time of effecting any such surplus lines insurance, the broker shall execute an affidavit in form prescribed or accepted by the commissioner setting forth facts from which it can be determined whether such insurance was eligible for export under KRS 304.10-040. The broker shall file this affidavit with the commissioner ***in the manner and form as prescribed by the commissioner through administrative regulation***~~[within sixty (60) days after the insurance was so effected, except where an alien insurer was used, in which case the broker shall file such affidavit within ninety (90) days]~~.

Approved April 22, 2004

CHAPTER 158

(HB 517)

AN ACT relating to the administration of trusts and estates.

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

ARTICLE 1

DEFINITIONS AND FIDUCIARY DUTIES

SECTION 1. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) "Accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (12) month period that begins when an income interest begins or ends when an income interest ends;

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary;

(3) "District Court approval" means the consent of:

(a) All current beneficiaries;

(b) All remainder beneficiaries in the oldest generation; and

(c) The court;

(4) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, and public administrator;

(5) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Articles 4 and 5 of the Kentucky Principal and Income Act;

(6) "Income beneficiary" means a person to whom net income of a trust is or may be payable;

(7) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion;

(8) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

(9) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under Sections 1 to 27 of this Act to or from income during the period;

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates;

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends;

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct; and

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

SECTION 2. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3 of the Kentucky Principal and Income Act, a fiduciary:

(a) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in Sections 1 to 27 of this Act;

(b) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by Sections 1 to 27 of this Act;

(c) Shall administer a trust or estate in accordance with Sections 1 to 27 of this Act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(d) Shall add a receipt or charge a disbursement to principal to the extent that neither the terms of the trust nor Sections 1 to 27 of this Act provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising the power to adjust under subsection (2) or (3) of Section 3 of this Act or a discretionary power of administration regarding a matter within the scope of Sections 1 to 27 of this Act, whether granted by the terms of a trust, a will, or Sections 1 to 27 of this Act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest a contrary intention. Except as provided in this subsection, determination in accordance with Sections 1 to 27 of this Act shall be presumed to be fair and reasonable to all of the beneficiaries.

SECTION 3. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any provision of Kentucky law to the contrary, the trustee of a trust to which by law KRS 287.277 does not apply may elect to have such provisions apply to the administration of the trust with approval of the District Court.

(2) A trustee may adjust between principal and income to the extent the trustee considers necessary if KRS 287.277 applies by law or by election made and approved under subsection (1) of this Act, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, the trustee determines, after applying the rules in subsection (1) of Section 2 of this Act, that the trustee is unable to comply with subsection (2) of Section 2 of this Act and the adjustment, including an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, is approved by the District Court.

(3) (a) A personal representative may adjust between principal and income in the same manner as a trustee if KRS 287.277 applies to the personal representative by law or if the personal representative elects to have KRS 287.277 apply to the administration of the estate, upon approval of the District Court, which approval may be an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, and:

1. The amount distributable to a beneficiary of the estate is determined by reference to the income of the estate; and

2. The personal representative determines, and after applying the rules of subsection (1) of Section 2 of this Act, that the personal representative is unable to comply with subsection (2) of Section 2 of this Act.

(4) A fiduciary shall not make an adjustment:

(a) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment;

(b) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(e) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust or estate for income tax purposes, and the individual would not be treated as the owner if the fiduciary did not possess the power to make an adjustment;

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust or estate assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary, appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;

(g) If the fiduciary is a beneficiary of the trust or estate; or

(h) If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly; except that any effect on the fiduciary's compensation shall not preclude an adjustment so long as the fiduciary's fees are reasonable and otherwise comply with the applicable law.

(5) If paragraph (e), (f), (g), or (h) of subsection (4) of this section applies to a fiduciary and there is more than one (1) fiduciary, a cofiduciary to whom the provision shall not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust.

(6) A fiduciary may release the entire power conferred by subsection (2) or (3) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the

fiduciary is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (a) to (f) of subsection (4) of this section or paragraph (h) of subsection (4) of this section, or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (4) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual. Such release shall require approval of the District Court. Further, with approval of the District Court, a fiduciary may divide a trust into one (1) or more fractional shares if the division does not change the beneficial interests.

(7) Terms of a trust or will that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust or will that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (2) or (3) of this section.

ARTICLE 2

DECEDENT'S ESTATE OR

TERMINATING INCOME INTEREST

SECTION 4. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply.

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3, 4, and 5 of the Kentucky Principal and Income Act that apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3, 4, and 5 of the Kentucky Principal and Income Act that apply to trustees and by:

(a) Including in net income all income from property used to discharge liabilities;

(b) Paying from income or principal, in the fiduciary's discretion, fees to attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) of this section, or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in Section 5 of this Act to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary shall not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in Section 21 of this Act to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary

receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

SECTION 5. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) Each beneficiary described in subsection (4) of Section 4 of this Act is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one (1) who shall not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of the death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules apply.

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by an unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

ARTICLE 3

APPORTIONMENT AT BEGINNING

AND END OF INCOME INTEREST

SECTION 6. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust:

(a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(c) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subjection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

SECTION 7. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) A trustee shall allocate an income receipt or disbursement other than one to which subsection (1) of Section 4 of this Act applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of Sections 1 to 27 of this Act. Distributions to shareholders or other owners from an entity to which Section 9 of this Act applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

SECTION 8. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term shall not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements. The settlor may change the charitable beneficiary of a trust by Will or through written notice to trustee, or may decline to make a change in like manner, so long as the change does not alter the income, gift, estate, or other tax benefits available under the terms of the trust.

ARTICLE 4

ALLOCATION OF RECEIPTS

DURING ADMINISTRATION OF TRUST

SECTION 9. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 10 of this Act applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money;

(b) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) Money received in total or partial liquidation of the entity; and

(d) Money received from an entity that is a regulated investment company or a real estate investment trust, if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation:

(a) To extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(b) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.

(5) Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection (4) of this section to the extent that it does not exceed the amount of income that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

SECTION 10. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 9 of this Act applies to a receipt from the trust.

SECTION 11. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A trustee shall allocate to principal:

(1) To the extent not allocated to income under Sections 1 to 27 of this Act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including stock splits and realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in subsection (1)(g) of Section 22 of this Act or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income;

(6) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal; and

(7) Other receipts as provided in Sections 15, 16, 17, 18, 19, and 20 of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not

available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

SECTION 13. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(3) This section shall not apply to an obligation to which Section 12, 16, 17, 18, or 19 of this Act applies.

SECTION 14. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in subsection (2) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or loss of profits from a business.

(3) This section shall not apply to a contract to which Section 16 of this Act applies.

SECTION 15. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

If a trustee determines that an allocation between principal and income required by Section 16, 17, 18, or 19 of this Act is unsubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in subsection (4) of Section 3 of this Act applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection (4) of Section 3 of this Act and may be released for the reasons and in the manner described in subsection (6) of Section 3 of this Act. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

SECTION 16. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(4) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(5) This section shall not apply to payments to which Section 17 of this Act applies.

SECTION 17. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that shall not provide for the payment of interest on the unpaid balance. The term shall not include an activity subject to Section 11(6) of this Act, payment subject to Section 16 of this Act, resources subject to Section 18 of this Act, timber subject to Section 19 of this Act, or any asset for which the trustee establishes a reserve for depreciation under Section 23 of this Act.

(2) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

SECTION 18. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income;

(b) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal;

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) shall be allocated to principal and the balance to income; or

(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a), (b), or (c) of this subsection, ninety percent (90%) of the net amount received shall be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety percent (90%) of the amount shall be allocated to principal and the balance to income.

(3) Sections 1 to 27 of this Act apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this Act, the trustee may allocate receipts from the interest as provided in Sections 1 to 27 of this Act or in the manner used by the trustee before the effective date of this Act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this Act, the trustee shall allocate receipts from the interest as provided in Sections 1 to 27 of this Act.

(5) The proceeds from any disposition of an interest specified in this section shall be allocated in the same manner as receipts from the interest.

SECTION 19. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (a) and (b) of this subsection; or

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraphs (a), (b), or (c) of this subsection.

(2) In determining net receipts allocated under subsection (1) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) Sections 1 to 27 of this Act apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on the effective date of this Act, the trustee may allocate net receipts from the sale of timber and related products as provided in Sections 1 to 27 of this Act or in the manner used by the trustee before the effective date of this Act. If the trust acquires an interest in timberland after the effective date of this Act, the trustee shall allocate net receipts from the sale of timber and related products as provided in Sections 1 to 27 of this Act.

SECTION 20. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) If a marital deduction is allowed for all or part of a trust, the spouse may require the trustee to make the trust income productive.

(2) In cases not governed by subsection (1) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

ARTICLE 5

ALLOCATION OF DISBURSEMENTS DURING

ADMINISTRATION OF TRUST

SECTION 21. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subsection (2)(b) or (2)(c) of Section 4 of this Act applies:

(1) One-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee, except as provided in KRS 386.180;

(2) One-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

SECTION 22. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) A trustee shall make the following disbursements from principal:

(a) That portion of the regular compensation of the trustee and any person providing investment advisory or custodial services to the trustee not paid from income under subsection (1) of Section 21 of this Act;

(b) The remaining one-half (1/2) of the disbursements described in subsection (2) of Section 21 of this Act;

(c) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(d) Payments on the principal of a trust debt;

(e) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(f) Premiums paid on a policy of insurance not described in subsection (4) of Section 21 of this Act of which the trust is the owner and beneficiary;

(g) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(h) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

SECTION 23. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

(2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but shall not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(b) During the administration of a decedent's estate.

(3) An amount transferred to principal need not be held as a separate fund.

SECTION 24. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) Disbursements described in subsection (1)(g) of Section 22 of this Act.

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1) of this section.

SECTION 25. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(a) From income to the extent that receipts from the entity are allocated to income; and

(b) From principal to the extent that:

1. Receipts from the entity are allocated to principal; and

2. The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (a) of this subsection and paragraph (b)1. of this subsection.

(4) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

SECTION 26. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) A fiduciary may, with District Court approval, make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(a) Elections and decisions, other than those described in subsection (2) of this section, that the fiduciary makes from time to time regarding tax matters;

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving, or a distribution from, the estate or trust; or

(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

SECTION 27. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of Section 3 of this Act that allow a trustee to adopt the prudent investor rule and make allocations to income shall not apply to any trust without District Court approval.

(2) The provisions of Sections 1 to 27 of this Act, other than Section 3 of this Act, shall apply to all trusts administered under Kentucky law, except as otherwise specifically provided in the instrument creating the trust, regardless of when created.

ARTICLE 6

MISCELLANEOUS PROVISION

SECTION 28. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 27 of this Act may be cited as the " Kentucky Principal and Income Act."

SECTION 29. The following KRS sections are repealed:

386.191 Definitions for KRS 386.191 to 386.349.

386.195 Rules of trust administration.

386.205 Definition of income and principal.

386.215 Income interest -- Income beneficiary.

386.225 Determination and distribution of income.

386.235 Corporate distribution of shares.

386.245 Corporate securities.

386.255 Net profits of business.

386.265 Royalties and other receipts from disposition of natural resources.

386.275 Timber.

386.285 Other depletable property.

386.295 Delayed income from sale of underproductive property.

386.305 Charges against income.

386.315 Apportionment of expenses.

386.325 Application of KRS 386.191 to 386.459.

386.335 Construction of KRS 386.191 to 386.349.

386.345 Effective date -- Application on receipts and expenses.

386.349 Short title.

Section 30. This Act takes effect January 1, 2005.

Approved April 22, 2004

CHAPTER 159

(HB 537)

AN ACT relating to mines and minerals.

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

Section 1. KRS 350.280 is amended to read as follows:

(1) (a) As used in this section, "he or she" includes "person" as defined in KRS 350.010.

(b) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm,~~[and the violation involves an order of cessation and immediate compliance or an order to abate and alleviate in which the cabinet directs the permittee or operator to begin immediate abatement of the violation,]~~ and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation. The easement of necessity becomes effective, and the permittee or operator is authorized to enter the property to undertake immediate action to abate the violation if he or she concurrently:

1. Provides to the property owner or legal occupant a copy of the cabinet's order ***and a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work***;

2. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and

3. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, ***will diligently pursue abatement of the violation, and*** will obtain an appraisal

completed by a~~[certified]~~ real estate appraiser ***certified under KRS Chapter 324A***~~[or other qualified appraiser]~~ of the damages to the property, including loss of use, that ***have resulted***~~[will result]~~ from the violation,~~[as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation,]~~ that the appraisal will be completed and provided to the property owner or legal occupant within three (3) days of ***abatement of the violation by***~~[entry of]~~ the operator or permittee, and that he or she will pay the property owner or legal occupant the amount of the damages in the permittee or operator's appraisal at that time.

(c) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages~~[that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation]~~:

1. The permittee or operator shall have ***a certified***~~[an]~~ appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within three (3) days of ***abatement of the violation***~~[entry on the property]~~ by the operator or permittee;

2. The property owner or legal occupant shall accept or reject this appraisal in writing within ***seven (7)***~~[three (3)]~~ days of receipt of the completed appraisal;

3. If the property owner or legal occupant rejects this appraisal, he or she may hire a~~[certified]~~ real estate appraiser ***certified under KRS Chapter 324A***~~[or other qualified appraiser]~~ to appraise the damages, including loss of use, that ***have resulted***~~[will result]~~ from the violation, ***and this such appraisal shall be completed and provided to the permittee or operator within thirty (30) days of receipt of the permittee's or operator's completed appraisal***~~[as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation]~~. Upon receipt of the invoice the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and

4. If the property owner or legal occupant ***accepts the permittee or operator's appraisal, the permittee or operator shall promptly pay the property owner or legal occupant the amount of the damages reflected therein***~~[has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee's or operator's completed appraisal]~~.

(d) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee's or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee's or operator's appraisal damages, and if the property owner or legal occupant's appraisal damages are for more than the permittee's or operator's, the permittee or operator shall pay the difference to the circuit clerk, in the county in which the majority of the property lies, to be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment. If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.

(e) If the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages ***within the time specified in subparagraph 2. of paragraph (c) of this subsection, the appraisal and offer shall be deemed accepted***~~[, the operator or permittee shall pay the appraised damages to the circuit clerk within three (3) business days of the nonacceptance. These funds shall be placed in an interest bearing account in a bank until resolution of the matter by agreement or court or jury judgment]~~.

(f) The appraiser shall calculate the damages to the property, including loss of use, that have resulted from the violation which the owner or the legal occupant shall be entitled to under this subsection as the difference between the fair market value of the property before the violation and after the abatement of the violation, plus the reasonable rental value of the property during the period of time between the effective date of the easement of necessity and the date of the abatement of the violation.

(2) If a permittee or operator has been issued a notice or order directing abatement of a violation other than one described in subsection (1) of this section, and the notice or order requires access to property for which the

permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator, for the limited purpose of allowing a~~[certified]~~ real estate appraiser ***certified under KRS Chapter 324*** ~~[or other qualified appraiser]~~, chosen by the permittee or operator, to enter upon the property to which the owner or legal occupant has refused access in order for the appraiser to appraise the damages, including loss of use, that ***likely*** will result from the violation~~[, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation]~~.

(3) (a) The easement for the limited purpose of allowing the appraisal ***under subsection (2) of this section*** shall be recognized and take effect when the operator or permittee:

1. Provides to the property owner or legal occupant a copy of the cabinet's order;

2. Provides to the property owner or legal occupant and cabinet a plan of remedial measures to abate the violation;

3. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and

4. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will within seven (7) days of entry of the appraiser obtain an appraisal~~[, by a certified real estate appraiser or other qualified appraiser,]~~ of the damages to the property including loss of use, that ***likely*** will result from the violation,~~[as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation,]~~ and that upon completion of the appraisal he or she will provide the appraisal to the property owner or legal occupant and pay the property owner or legal occupant ***an entry fee. The entry fee shall be calculated as one-half (1/2) of the amount of the appraisal or the sum of five hundred dollars ($500), whichever is greater, for the privilege to enter the property and conduct*** ~~[the amount of]~~ the appraisal.

(b) ***Upon payment of the entry fee by the permittee or operator, an easement of necessity shall be recognized on behalf of the permittee or operator for the limited purposes of abating the violation and the operator or permittee shall be authorized to enter the property to undertake immediate action to abate the violation, provided that the landowner has been provided a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and the permittee or operator provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work.***

(c) Following the effective date of the easement of necessity to abate the violation, the procedures set forth in subsection (1)(c) through (f) of this section shall apply. The entry fee shall be deducted from any subsequent payment deemed due the property owner or legal occupant as a result of the post-abatement appraisal or appraisals. If the entry fee exceeds the amount of all appraisals, the property owner or legal occupant shall be entitled to retain the entry fee in its entirety ~~[When the easement takes effect, the property owner or legal occupant shall allow access for the permittee's or operator's certified real estate appraiser or other qualified appraiser to conduct the appraisal]~~.

(4) ***Nothing contained in this section shall affect any person's right to bring a civil action for damages, including punitive and compensatory damages, or other appropriate relief*** ~~[Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages to the property that will result from the violation, as abated, and those that are likely to occur, under this subsection:~~

~~(a) The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within seven (7) days of the entry of the appraiser on the property;~~

~~(b) The property owner or legal occupant shall accept or reject this appraisal within three (3) days of receipt of the completed appraisal;~~

~~(c) If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice, the permittee or operator shall pay for the property owner's or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and~~

~~(d) If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee's or operator's appraisal.~~

~~(5) (a) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee's or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee's or operator's appraisal damages.~~

~~(b) If the property owner's or legal occupant's appraisal damages are for more than the permittee's or operator's, the permittee or operator shall pay the difference to the circuit clerk.~~

~~(c) The difference shall be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment.~~

~~(d) If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.~~

~~(6) If the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the circuit clerk within three (3) business days. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.~~

~~(7) In cases under subsection (2) of this section, when the procedures in subsections (4) and (5)(a) and (b) of this section, or subsections (4)(a) and (b) and (6) of this section, have been satisfied, the permittee or operator may enter the property to abate the violation.~~

~~(8) Nothing in this section shall affect any person's right for damages or injunctive relief~~].

Approved April 22, 2004

CHAPTER 160

(HB 550)

AN ACT relating to the Department of Juvenile Justice and declaring an emergency.

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

Section 1. KRS 15A.065 is amended to read as follows:

(1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:

(a) Prevention of juvenile crime;

(b) Identification of juveniles at risk of becoming status or public offenders and development of early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;

(c) Providing educational information to law enforcement, prosecution, victims, defense attorneys, the courts, the educational community, and the public concerning juvenile crime, its prevention, detection, trial, punishment, and rehabilitation;

(d) The operation of or contracting for the operation of postadjudication treatment facilities and services for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;

(e) The operation or contracting for the operation, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;

(f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;

(g) Conducting research and comparative experiments to find the most effective means of:

1. Preventing delinquent behavior;

2. Identifying predelinquent youth;

3. Preventing predelinquent youth from becoming delinquent;

4. Assessing the needs of predelinquent and delinquent youth;

5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;

6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and

(h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.

(2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.

(3) The Department of Juvenile Justice may contract for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:

(a) Bidding process; and

(b) Emergency acquisition process.

(4) The Department of Juvenile Justice shall develop programs to:

(a) Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;

(b) Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and

(c) Provide mental health services to committed youth according to their needs.

(5) (a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, as amended, and which shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for Families and Children, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.

(b) The advisory board shall be chaired by a private citizen member appointed by the Governor and shall serve a term of two (2) years and thereafter be elected by the board. The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms. The membership of the advisory board shall consist of no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been re-appointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include the following:

1. Three (3) current or former participants in the juvenile justice system;
2. An employee of the Department of Juvenile Justice;
3. An employee of the Cabinet for Families and Children;
4. A person operating alternative detention programs;
5. An employee of the Department of Education;
6. An employee of the Department of Public Advocacy;
7. An employee of the Administrative Office of the Courts;
8. A representative from a private nonprofit organization with an interest in youth services;
9. A representative from a local juvenile delinquency prevention council;
10. A member of the Circuit Judges Association;
11. A member of the District Judges Association;
12. A member of the County Attorneys Association;
13. A member of the County Judge/Executives Association;
14. A person from the business community not associated with any other group listed in this paragraph;
15. A parent not associated with any other group listed in this paragraph;
16. A youth advocate not associated with any other group listed in this paragraph;
17. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
18. A local school district special education administrator not associated with any other group listed in this paragraph;
19. A peace officer not associated with any other group listed in this paragraph; and
20. A college or university professor specializing in law, criminology, corrections, psychology, or similar discipline with an interest in juvenile corrections programs.

(c) Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.

(6) The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:

(a) Facility access;

(b) Scheduling; and

(c) Access to residents' records.

(7) The Department of Juvenile Justice may, if space is available and conditioned upon the department's ability to regain that space as needed, contract with another state or federal agency to provide services to youth of that agency.

Section 2. KRS 610.220 is amended to read as follows:

(1) Except as otherwise provided by statute, if an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, youth alternative center, a nonsecure facility, or, as necessary, in a hospital or clinic for the following purposes:

(a) Identification and booking;

(b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;

(c) Photographing;

(d) Fingerprinting;

(e) Physical examinations, including examinations for evidence;

(f) Evidence collection, including scientific tests;

(g) Records checks;

(h) Determining whether the child is subject to trial as an adult; and

(i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location***, and shall not be handcuffed to or otherwise securely attached to any stationary object***.

Section 3. KRS 610.265 is amended to read as follows:

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays pending a detention hearing.

(2) (a) Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders a child detained further after the detention hearing, that detention shall be served as follows:

1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.

2. If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.

3. If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph.

4. Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:

   a. Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;

   b. Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and

   c. Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.

5. If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.

6. If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(c) ***If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in Section 4 of this Act.***

(d) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

Section 4. KRS 610.290 is amended to read as follows:

(1) Unless a hearing is held within the time frame established by KRS 610.265, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case.

(2) ***The***~~[A]~~ child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.

(3)~~[(2)]~~ Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

Section 5. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing, may:

(1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency; or

(2) Place the child~~[on probation, home incarceration, or]~~ under ***parental*** supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine***, or place the child on probation under conditions that the court shall determine. At the time the child is placed on probation the court shall explain to the child the sanctions which may be imposed if the court's conditions are violated, and shall include notice of those sanctions as part of its written order of probation***. A child placed on probation~~[, home incarceration, or supervision]~~ shall be subject to the visitation and supervision of a probation officer or an employee of the Department of Juvenile Justice~~[and, unless the court's order contains a specific sanction to be imposed in the event that a violation of probation occurs, a violation of probation may result in commitment]~~. Except as provided in KRS 635.083, a child placed on probation~~[, home incarceration,]~~ or ***parental*** supervision shall remain subject to the jurisdiction of the court until the child becomes eighteen (18) years of age, unless the child is discharged prior thereto by the court, except that if a person is placed on probation~~[, home incarceration, or supervision]~~ after the person reaches the age of seventeen (17) years and six (6) months, the probation~~[, home incarceration, or supervision]~~ shall be for a period not to exceed one (1) year; or

(3) Commit or recommit the child to the custody~~[or guardianship]~~ of the Department of Juvenile Justice, ***or grant guardianship to*** a child-caring facility, a child-placing agency authorized to care for the child, or place the child under the custody and supervision of a suitable person. If the child is detained in an approved secure juvenile detention facility or juvenile holding facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed or recommitted to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice shall accept physical custody of the child, remove the child from the approved secure juvenile detention facility or juvenile holding facility, and secure appropriate placement as soon as possible but not to exceed thirty-five (35) days of the time of commitment or recommitment. The Department of Juvenile Justice shall pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed. All orders of commitment may include advisory recommendations the court may deem proper in the best interests of the child and of the public. The commitment or placement shall be until the age of eighteen (18), subject to KRS 635.070 and to the power of the court to terminate the order and discharge the child prior thereto, except that if the commitment or placement is after a person has reached the age of seventeen (17) years and six (6) months, the commitment or placement shall be for an indeterminate period not to exceed one (1) year. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; or

(4) If the child is fourteen (14) years of age but less than sixteen (16) years of age, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as

authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed forty-five (45) days; or

(5) If the child is sixteen (16) years of age or older, order that the child be confined in an approved secure juvenile detention facility, juvenile holding facility, or approved detention program as authorized by the Department of Juvenile Justice in accordance with KRS Chapter 15A for a period of time not to exceed ninety (90) days; or

(6) Any combination of the dispositions listed above ***except that, if a court probates or suspends a commitment in conjunction with any other dispositional alternative, that fact shall be explained to the juvenile and contained in a written order***.

The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to subsection (4) or (5) of this section in accordance with the statewide detention plan and administrative regulations implementing the plan.

Section 6. KRS 635.100 is amended to read as follows:

(1) Any child committed to or in the custody of the Department of Juvenile Justice who escapes or is absent without leave from his or her placement shall be taken into custody and returned to the custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.

(2) Any child committed to the Department of Juvenile Justice who is placed on supervised placement by the Department of Juvenile Justice and who violates the terms or conditions of supervised placement may be returned to active custody of the Department of Juvenile Justice and ***shall*** ~~[may]~~ be taken into custody by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.

(3) A child taken into custody may be held in a Department of Juvenile Justice facility, program, or contract facility, prior to the administrative hearing, provided a preliminary hearing is held by a person designated by the Department of Juvenile Justice within five (5) days, exclusive of weekends and holidays, of the holding, unless the child or his representative request or agree to a longer period of time, to determine if there is probable cause to believe that the child violated his supervised placement conditions and, if so, to determine if the best interest of the child requires that the child be held in custody pending an administrative hearing pursuant to subsection (5) of this section. The child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and to be represented by counsel at the preliminary hearing.

(4) A child taken into custody as provided in subsection (1) of this section shall be returned to the active custody of the Department of Juvenile Justice within three (3) days, exclusive of weekends and holidays, and no administrative hearing shall be required.

(5) If the child is returned to the active custody of the Department of Juvenile Justice as provided in subsection (3) of this section an administrative hearing shall be held within ten (10) days, exclusive of weekends and holidays, of the preliminary hearing unless the child and his representative request or agree to a longer period of time. The hearing shall be held by one (1) hearing officer designated by the Department of Juvenile Justice to hear such matters at which time the child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and be represented by counsel.

(6) The department shall have the power to administer oaths and to issue subpoenas compelling the attendance of witnesses as it may deem necessary to the case of any child before it. Disobedience of a subpoena may be punished as contempt of court, after a hearing before the committing juvenile court.

(7) Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.

(8) The Department of Juvenile Justice shall promulgate administrative regulations to govern at least the following aspects of this section:

(a) Commissioner's warrant;

(b) Procedural aspects of the hearing;

(c) Burden of proof;

(d) Standard of proof; and

(e) Administrative appeal process.

Section 7. KRS 635.510 is amended to read as follows:

(1) A child, thirteen (13) years of age or older ***at the time of the commission of the offense***, shall be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(a), (b), (c), (d), (e), or (f).

(2) (a) A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2).

(b) Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(g).

(3) Upon final adjudication by the juvenile court under subsection (2) of this section, the juvenile court judge shall order a juvenile sexual offender assessment to be conducted on the child by the program or by a qualified professional approved by the program which shall recommend ***whether the child be declared a sexual offender and receive sexual offender***~~[the appropriate course of]~~ treatment. Upon receipt of the findings of the assessment, the juvenile court judge shall determine whether the child shall be declared a juvenile sexual offender, and, if so, shall initiate a referral to the program for treatment.

Section 8. KRS 640.030 is amended to read as follows:

A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

(1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;

(2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:

(a) Whether the youthful offender shall be placed on probation or conditional discharge;

(b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed ***the youthful offender's attainment of the age of eighteen (18) years and five (5) months***~~[a period in excess of six (6) months]~~. At the conclusion of the treatment program~~[or at the expiration of six (6) months, whichever first occurs]~~, the individual shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or

(c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;

(3) If a youthful offender has attained the age of eighteen (18) ***years but less than eighteen (18) years and five (5) months*** prior to sentencing, that individual shall be returned to the sentencing court ***upon attaining the age of eighteen (18) years and five (5) months***~~[at the end of a six (6) month period]~~ if that individual has been sentenced to a period of placement or treatment with the Department of Juvenile Justice. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section; and

(4) ***The Department of Juvenile Justice shall inform the sentencing court of any youthful offender in their custody pursuant to this section who has attained the age of eighteen (18) years and five (5) months, and the court shall enter a court order directing the sheriff or jailer to transport the youthful offender to the county jail to await sentencing pursuant to subsection (2)(a) or (c) of this section; and***

(5) KRS 197.420 to the contrary notwithstanding, a youthful offender who is a sexual offender as defined by KRS 197.410(1) shall be provided a sexual offender treatment program by the Department of Juvenile Justice

pursuant to KRS 635.500 and as mandated by KRS 439.340(11) unless the youthful offender has been transferred to the Department of Corrections.

Section 9. KRS 17.495 is amended to read as follows:

No registrant, as defined in KRS 17.500, who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility. The measurement shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence. ***This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in a secondary education program.***

Section 10. KRS 17.552 is amended to read as follows:

No person shall conduct comprehensive sex offender presentence evaluations or treatment without first obtaining approval from the Sex Offender Risk Assessment Advisory Board, except that the Department of Corrections sex offender treatment program shall be regulated under KRS 197.400 to 197.440 and excluded from the application of this statute ***and the Department of Juvenile Justice sex offender treatment program shall be regulated under KRS 635.500 and 635.520 and excluded from the application of this statute***.

Section 11. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody and is ineligible for probation or conditional discharge.

(2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence ***or prior to final sentencing for youthful offenders***, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.550**,** ~~[or]~~ the Department of Corrections***, or the Department of Juvenile Justice if the defendant is a youthful offender***. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

(5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

(6) Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

Section 12. Whereas the Commonwealth must revise its current laws in order to comply with federal funding requirements, an emergency is declared to exist with regards to Sections 2, 3, 4, and 8 of this Act, and those sections shall take effect upon passage and approval by the Governor or upon their otherwise becoming law.

Approved April 22, 2004

CHAPTER 161

(HB 551)

AN ACT relating to certified employees called to active military service.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 161 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other statute to the contrary, a certified employee of a local board of education who is called to active military duty shall be granted a leave of absence for this purpose and shall be considered to be rendering service to the state.

(1) A local board of education that has granted military leave to a certified employee and has a commitment from the employee to return to work upon the conclusion of military leave may provide the employer's contribution toward the purchase of the state's medical insurance program during the period of military leave as long as the employee or spouse pays the additional cost of dependent coverage.

(2) Upon the employee's return to work, a local school district may pay the member contribution and any accrued interest that is required to be paid to the Kentucky Teachers' Retirement System under KRS 161.507(4)(b) in order for the member to receive retirement service credit for the period of active military duty. This payment shall be paid in lump sum by the school district directly to the retirement system on the member's behalf under the conditions set forth in KRS 161.540(2). This lump sum payment shall not be included in a member's annual compensation as defined under KRS 161.220(10). Under no circumstances shall a member be entitled to service credit under this paragraph that is in violation of the provisions of KRS 161.500.

(3) For each year of military service or each year of combined military and school service within a school year, the certified employee shall receive a year of service credit for purposes of the district's single salary schedule defined in KRS 157.320.

(4) No provisions of this section shall be construed to provide disability benefits under KRS 161.611 or 161.663, survivorship benefits under KRS 161.520, life insurance benefits under KRS 161.555 or any other benefit available from the Kentucky Teachers' Retirement System as a result of active military service, or conditions or injuries resulting from active military service, except for the accrual of service credit which shall be acknowledged by the retirement system subject to the relevant conditions set forth in KRS 161.507.

Section 2. KRS 161.720 is amended to read as follows:

(1) The term "teacher" for the purpose of KRS 161.730 to 161.810 shall mean any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of the superintendent.

(2) The term "year" as applied to terms of service means actual service of not less than seven (7) school months within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement ***or military leave for active duty service*** with full credit for service.

(3) The term "limited contract" shall mean a contract for the employment of a teacher for a term of one (1) year only or for that portion of the school year that remains at the time of employment.

(4) The term "continuing service contract" shall mean a contract for the employment of a teacher which shall remain in full force and effect until the teacher resigns or retires, or until it is terminated or suspended as provided in KRS 161.790 and 161.800.

(5) The term "continuing status" means employment of a teacher under a continuing contract.

(6) The term "standard" or "college" certificate for the purpose of KRS 161.730 to 161.810 shall mean any certificate issued upon the basis of graduation from a standard four (4) year college or completion of a local district alternative certification training program.

(7) The term "superintendent" for the purpose of KRS 161.765 shall mean the school officer appointed by a board of education under the authority of KRS 160.350 or any person authorized by law to perform the duties of that officer.

(8) The term "administrator" for the purpose of KRS 161.765 shall mean a certified employee, below the rank of superintendent, who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, school psychologist, or school business administrator. The term "administrator" shall also include those assistant, associate, or deputy superintendents who do not fall within the definition of "superintendent" as set forth in subsection (7) of this section.

(9) The terms "demote" or "demotion" for the purpose of KRS 161.765 shall mean a reduction in rank from one position on the school district salary schedule to a different position on that schedule for which a lower salary is paid. The terms shall not include lateral transfers to positions of similar rank and pay or minor alterations in pay increments required by the salary schedule.

Section 3. KRS 161.740 is amended to read as follows:

(1) Teachers eligible for continuing service status in any school district shall be those teachers who meet qualifications listed in this section:

(a) Hold a standard or college certificate as defined in KRS 161.720 or meet the certification standards for vocational education teachers established by the Education Professional Standards Board.

(b) When a currently employed teacher is reemployed by the superintendent after teaching four (4) consecutive years in the same district, or after teaching four (4) years which shall fall within a period not to exceed six (6) years in the same district, the year of present employment included, the superintendent shall issue a written continuing contract if the teacher assumes his duties, and the superintendent shall notify the board of the action taken. ***A limited status employee on approved military leave shall be awarded service credit for each year of military service or each year of combined military and school service within a school year toward continuing contract status. If the leave time will qualify the teacher for continuing contract status, the local district may require the teacher to complete a one (1) year probationary period upon return. If required, the local district shall notify the teacher in writing within fourteen (14) days following receipt of the military leave request.*** Each day served in the General Assembly by a board of education employee during a regular or extraordinary session shall be included in the computation of a year as defined in KRS 161.720(2).

(c) When a teacher has attained continuing contract status in one district and becomes employed in another district, the teacher shall retain that status. However, a district may require a one (1) year probationary period of service in that district before granting that status. For purposes of this subsection, the continuing contract of a teacher shall not be terminated when the teacher leaves employment, all provisions of KRS 161.720 to 161.810 to the contrary notwithstanding, and the continuing service contract shall be transferred to the next school district, under conditions set forth in this section, for a period of up to seven (7) months from the time employment in the first school district has terminated. Nothing contained herein shall be construed to give a teacher a right to reemployment in the first school district during the seven (7) month period following termination.

(d) Service credit toward a continuing contract shall begin only when a teacher is properly certified as defined in KRS 161.720(6) or, in the case of a vocational education teacher, when the required certification standards established by the Education Professional Standards Board have been met.

(2) Vocational education teachers fulfilling the requirements in subsection (1) of this section as of July 15, 1982, shall be eligible for continuing service status.

(3) ***Whether employed under a limited contract or continuing service contract status,*** any teacher or superintendent who has been or may be hereafter inducted into the Armed Forces of this country, shall at the expiration of service be reemployed or reinstated in a comparable position as of the beginning of the next school year, provided application is made at least thirty (30) days before the opening of school, unless physically or mentally incapacitated according to medical notations on official discharge papers. Vacancies

created by military leaves shall be filled by teachers or superintendents employed by the board of education under a limited contract of one (1) year or less.

Approved April 22, 2004

CHAPTER 162

(HB 563)

AN ACT relating to detection of deception examiners.

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

Section 1. KRS 329.030 is amended to read as follows:

(1) No person shall administer a detection of deception examination, as set forth in KRS 329.010, or any imitation thereof, without first securing a trainee's license or an examiner's license. Each application for a trainee's license shall be made to the cabinet within ten (10) days of the commencement of the trainee's internship, and said application shall contain such information as may be reasonably required by the cabinet. Each application for a trainee license or a renewal or extension shall be accompanied by a fee of twenty-five dollars ($25), which is nonrefundable. Each application for an examiner's license shall be made to the cabinet in writing on forms provided by the cabinet and shall contain such information as may be required by the cabinet to determine the eligibility of the applicant. Each application for an examiner's license shall be accompanied by a fee of fifty dollars ($50), which is nonrefundable.

(2) Each applicant for an examiner's license shall submit his fingerprints to the cabinet***. The cabinet is authorized to exchange fingerprint data with the Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of the applicant. Each applicant shall also submit***~~[together with]~~ a sworn affidavit that said applicant:

(a) Is a citizen of the United States;

(b) Is at least eighteen (18) years of age;

(c) Has administered detection of deception examinations for a period of at least one (1) year using the instrumentation prescribed in KRS 329.020;

(d) Has completed a course of formal training in detection of deception in an institution accepted by the cabinet;

(e) Has not been convicted of a misdemeanor involving moral turpitude or a felony, or who has not been released or discharged under other than honorable conditions from any of the Armed Services of the United States, or any branch of the state, city or federal government; and

(f) Any other information required by the cabinet to determine the examiner's competency to obtain a license to practice in this state.

(3) Upon receipt of an application for a trainee's license or for an examiner's license, the secretary shall investigate each application, and no license will be issued until said investigation is complete.

(4) The cabinet shall establish such reasonable rules and regulations for the trainee during his internship as may be reasonably necessary for the purpose of insuring that the trainee meets adequate professional standards established by the cabinet.

(5) The cabinet may require applicants for an examiner's license to pass an examination which shall be confined to such knowledge, practical ability and skill as is essential for performing the duties of a detection of deception examiner. The cabinet shall make rules and regulations for conducting examinations and shall define the standards to be acquired to constitute passing the examination.

(6) The cabinet shall establish such reasonable rules and regulations for the examiner during his period of licensure as may be reasonably necessary for the purpose of insuring that the examiner maintain adequate professional standards established by the cabinet.

Approved April 22, 2004

CHAPTER 163

(HB 571)

AN ACT relating to the Board of Dentistry.

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

Section 1. KRS 313.130 is amended to read as follows:

The board may ***issue a private admonishment***, reprimand**,** or place on probation, or may revoke, suspend, refuse to renew, or refuse to issue a license to any dentist for any of the following causes:

(1) Conviction of any felony or conviction of only those misdemeanors involving moral turpitude, in which case the record of conviction or a copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.

(2) Renting or lending to any person his license or diploma to be used as a license or diploma, or illegally or fraudulently obtaining a license from the board.

(3) Unprofessional conduct, gross ignorance, or inefficiency in his profession or failure to accumulate a sufficient number of points for continuing dental education as prescribed by the board under the provisions of KRS 313.080.

(4) Violating any of the provisions of this chapter or any lawful order, rule, or regulation made or issued under the provisions of this chapter.

(5) Addiction to a drug habit.

(6) Chronic or persistent alcoholism.

(7) Such physical or mental disability, or other condition, that continued practice would be dangerous to patients or to the public.

A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

Approved April 22, 2004

CHAPTER 164

(HB 596)

AN ACT relating to covered wooden bridges and declaring an emergency.

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

Section 1. KRS 176.400 is amended to read as follows:

(1) Administrative control of covered wooden bridges designated as state shrines shall be shared by the Transportation Cabinet, the Department of Parks, ***the Kentucky Heritage Council,*** and the authorities created under KRS 176.410.

(2) The Transportation Cabinet shall maintain all covered wooden bridges in the Commonwealth which are on public roads and open to vehicular traffic. The cabinet shall maintain the bridges for safety and for historical and aesthetic beauty. The cabinet shall prepare estimates of the cost of maintaining covered wooden bridges which are on public roads and open to vehicular traffic and shall identify and include the total of these estimates in its biennial budget request.

(3) The cabinet may delegate its responsibility for maintenance of covered bridges located on roads maintained by a county to the local government responsible for such roads. Delegation of responsibility for maintenance of covered bridges to a local government shall require periodic inspection by the cabinet.

(4) Nothing in this section shall prevent an appropriate unit of government from closing a covered wooden bridge to vehicular traffic.

(5) The Department of Parks shall be responsible for all covered wooden bridges located in the Commonwealth which are on public property and no longer open to vehicular traffic. The department shall maintain these bridges in sound structural condition and for historical and aesthetic beauty. The department shall prepare estimates of the cost of maintaining covered wooden bridges for which it has a responsibility and shall identify and include the total of these estimates in its biennial budget request.

(6) When an appropriation is made to a covered wooden bridge authority created under the provisions of KRS 176.410, the Department ***of Parks*** shall transfer the obligation of maintenance for the bridges designated in the appropriation to that authority.

(7) An authority may retransfer the right of possession or title and the obligation of maintenance of covered bridges under its jurisdiction to the Department of Parks.

(8) The Heritage Division ***of the Kentucky Heritage Council*** may determine that an authority is inactive or unable to discharge its responsibilities and may transfer the right of title or possession to covered bridges under the jurisdiction of the authority to the Department of Parks. The division shall give notice of such an action to the authority and the Department of Parks.

(9) (a) Prior to administering a project that involves the preservation, restoration, or maintenance of a covered wooden bridge, the administering entity shall:

1. Consider all recommendations submitted pursuant to Section 2 of this Act by a covered wooden bridge authority pertaining to any bridge involved in the project;

2. Consult with the covered wooden bridge authority dedicated to the preservation, restoration, and maintenance of any bridge involved in the project, if such an authority exists; and

3. Hold at least one (1) public hearing within the county in which the bridge is located, with due notice given pursuant to KRS Chapter 424. The public hearing shall be held no later than sixty (60) days prior to the date the project is commenced or contracted, whichever is earlier.

(b) The requirements of paragraph (a) of this subsection shall not apply to any emergency maintenance project that involves a covered wooden bridge if the project cost is less than fifty thousand dollars ($50,000).

(10) In addition to the requirements set forth in subsection (9) of this section, any project that involves the preservation, restoration, or maintenance of a covered wooden bridge shall require approval by the Kentucky Heritage Council prior to the date the project is commenced or contracted, whichever is earlier.

Section 2. KRS 176.410 is amended to read as follows:

(1) Except as provided by KRS 176.400, at the request of citizens or organizations of a county or multicounty region, the Heritage Division ***of the Kentucky Heritage Council*** shall certify to the Governor the creation of a county or multicounty covered wooden bridge authority for that county or multicounty region.

(2) ***(a)*** An authority shall consist of ***members appointed as follows:***

1. The Governor shall appoint one (1) member from each participating county, unless the authority has only one (1) participating county, in which case the Governor shall appoint three (3) members from the participating county; and

2. The fiscal court of each participating county shall submit to the Governor a list of three (3) candidates, and the Governor shall appoint one (1) member from each list unless the authority has two (2) or fewer participating counties, in which case the Governor shall appoint two (2) members from each list~~[five (5) members to be appointed by the Governor]~~.

(b) The members of an authority shall hold office for terms of four (4) years and until their successors are appointed and qualify except that the terms of office of the members first appointed shall be ***staggered***~~[as follows: two (2) members shall be nominated and appointed for two (2) years, and three (3) members shall be nominated and appointed for four (4) years]~~. An authority may elect by majority voice officers deemed necessary by its members. A majority of the members shall constitute a quorum. An authority shall meet at the call of its chairman, but at least twice during each calendar year.

(3) An authority shall be dedicated to the preservation, restoration, and maintenance of all covered wooden bridges~~[not open to vehicular traffic]~~ in the county or multicounty region for which it is created.

(a) ***For covered wooden bridges not open to vehicular traffic,*** the duties and functions of an authority shall be to:

1.~~[(a)]~~ Review, recommend, and administer projects and programs to insure the proper preservation, restoration, and maintenance of covered wooden bridges in the county or multicounty region for which it is created.

2.~~[(b)]~~ Advise, consult, and cooperate with state, local, and national officials and agencies, and with the Heritage Division ***of the Kentucky Heritage Council*** as provided by KRS 176.400 and 176.410, to accomplish the purposes for which the authority is established.

(b) For covered wooden bridges open to vehicular traffic, the duties and functions of an authority shall be to:

1. Make recommendations to the Transportation Cabinet and local officials on the proper preservation, restoration, and maintenance of covered wooden bridges in the county or multicounty region for which it is created.

2. Advise, consult, and cooperate with state, local, and national officials and agencies to accomplish the purposes for which the authority is established.

(4) An authority may:

(a) Accept grants or other funds or property from any source, public or private;

(b) Enter into such contractual relationships as may be necessary;

(c) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the authority;

(d) Adopt rules and regulations necessary to the performance of its duties and functions.

(5) Members of an authority may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and reasonable expenses incurred in the furtherance of the authority's activities.

(6) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of state agencies.

(7) ***(a)*** ***For covered wooden bridges not open to vehicular traffic,*** each authority shall develop a program for the preservation, restoration, and maintenance of ***those*** covered wooden bridges in the county or multicounty region for which it was established. It shall select the bridges to be preserved, restored, or maintained within a biennium and shall prepare estimates of the cost of preservation, restoration, or maintenance within that biennium.

(b)~~[(8)]~~ The program developed by an authority shall be submitted to the Heritage Division ***of the Kentucky Heritage Council***. Upon approval by the division, the authority shall submit its program as its biennial budget request.

(c)~~[(9)]~~ When an appropriation is made to an authority to fund its program for the preservation, restoration, and maintenance of covered wooden bridges, title to all covered wooden bridges to be preserved, restored, or maintained under its authority shall be transferred to the authority. Preservation, restoration, and maintenance of covered wooden bridges shall comply with the program approved by the ***Heritage Division of the Kentucky Heritage Council***~~[division]~~ and shall be administered by the authority. Each authority is authorized to enter into any agreement or contract necessary to implement an approved and funded program.

(8) For covered wooden bridges open to vehicular traffic, each authority shall develop a biennial list of recommendations for the preservation, restoration, and maintenance of those covered wooden bridges in the county or multicounty region for which it was created. This list shall be submitted biennially to the Transportation Cabinet and all fiscal courts within the authority's jurisdiction.

(9)~~[(10)]~~ There is established the covered wooden bridge authority for the counties of Bracken, Fleming, Lewis, Mason, and Robertson as a pilot project.

Section 3. The membership of any covered wooden bridge authority in existence on the effective date of this Act shall remain intact, but within 30 days of the effective date of this Act, additional members shall be appointed

pursuant to subsection (2) of Section 2 of this Act. Terms of the initial members added to an existing authority shall be staggered from two to four years to provide continuity.

Section 4. Whereas proper and timely preservation, restoration, and maintenance of the state's covered wooden bridges is critical to preserving Kentucky's cultural heritage and unique beauty, an emergency is declared to exist, and this Act takes effect upon its passage or approval by the Governor or upon its otherwise becoming a law.

Approved April 22, 2004

CHAPTER 165

(HB 609)

AN ACT relating to administrative regulations.

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

Section 1. KRS 11.202 is amended to read as follows:

(1) The duties of the Commission on Small Business Advocacy shall include, but not be limited to:

(a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;

(b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;

(c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector;~~[and]~~

(d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community***; and***

(e) Review administrative regulations that may impact small business. The commission may seek input from other agencies, organizations, or interested parties. In acting as an advocate for small business, the commission may submit a written report to the promulgating administrative body to be considered as comments received during the public comment period required by subsection (1)(c) of Section 5 of this Act. The report may specify the commission's findings regarding the administrative regulation, including an identification and estimate of the number of small businesses subject to the administrative regulation, the projected reporting, recordkeeping, and other administrative costs required for compliance with the administrative regulation, and any suggestions the commission has for reducing the regulatory burden on small businesses through the use of tiering or exemptions, in accordance with Section 4 of this Act. A copy of the report shall be filed with the regulations compiler of the Legislative Research Commission.

(2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:

(a) Activities and achievements of the commission in accomplishing its purposes and duties;

(b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and

(c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

Section 2. KRS 13A.010 is amended to read as follows:

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

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;

(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:

(a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;

(b) Declaratory rulings;

(c) Intradepartmental memoranda not in conflict with KRS 13A.130;

(d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or

(e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;

(3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;

(4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;

(5) "Commission" means the Legislative Research Commission;

(6) "Economic impact" means a financial impact on:

(a) Commercial enterprises;

(b) Retail businesses;

(c) Service businesses;

(d) ***Small businesses;***

(e) Industry;

(f) ***Government;***

(g) ~~[(e)]~~ Consumers of a product or service; or

(h) ~~[(f)]~~ Taxpayers;

(7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331;

(8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;

(9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;

(10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;

(11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;

(12) ***"Government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance.***

(13) "Proposed administrative regulation" means an administrative regulation that an administrative body proposes to promulgate;

(14) ~~[(13)]~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;

(15) ~~[(14)]~~ ***"Small business" means a business entity, including its affiliates, that:***

(a) Is independently owned and operated; and

(b) 1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or

2. Has gross annual sales of less than six million dollars ($6,000,000).

(16) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;

(17) ~~[(15)]~~ "Subcommittee" means the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, an interim joint committee, or a House and Senate standing committee; and

(18) ~~[(16)]~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

Section 3. KRS 13A.030 is amended to read as follows:

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including, but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon administrative regulations submitted to it by the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That an administrative regulation is deficient because it:

1. Is wrongfully promulgated;

2. Appears to be in conflict with an existing statute;

3. Appears to have no statutory authority for its promulgation;

4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;

5. Fails to use tiering when tiering is applicable;

6. Is in excess of the administrative body's authority;~~[or]~~

7. ***Appears to impose an unreasonable burden on government or small business, or both; or***

8. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute; or

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

Section 4. KRS 13A.210 is amended to read as follows:

(1) When promulgating administrative regulations and reviewing existing ones, administrative bodies shall, whenever possible, tier their administrative regulations to reduce disproportionate impacts on certain classes of regulated entities***, including government or small business, or both,*** and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The tiers, however, ***shall***~~[must]~~ be based upon reasonable criteria and uniformly applied to an entire class. Administrative bodies shall use any number of tiers that will solve most efficiently and effectively the problem the administrative regulation addresses. A written statement shall be submitted to the Legislative Research Commission explaining why tiering was or was not used.

(2) Administrative bodies may use, but shall not be limited to, the following methods of tiering administrative regulations:

(a) Reduce or modify substantive regulatory requirements;

(b) Eliminate some requirements entirely;

(c) Simplify and reduce reporting and recordkeeping requirements;

(d) Provide exemptions from reporting and recordkeeping requirements;

(e) Reduce the frequency of inspections;

(f) Provide exemptions from inspections and other compliance activities;

(g) Delay compliance timetables;

(h) Reduce***,***~~[or]~~ modify***, or waive fines or other penalties***~~[fine schedules]~~ for noncompliance; and

(i) Address and alleviate special problems of individuals and small businesses in complying with an administrative regulation.

(3) When tiering regulatory requirements, administrative bodies may use, but shall not be limited to, size and nonsize variables. Size variables include number of citizens, number of employees, level of operating revenues, level of assets, and market shares. Nonsize variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.

(4) When modifying tiers, administrative bodies shall monitor, but shall not be limited to, the following variables:

(a) Changing demographic characteristics;

(b) Changes in the composition of the work force;

(c) Changes in the inflation rate requiring revisions of dollar-denominated tiers;

(d) Changes in market concentration and segmentation;

(e) Advances in technology; and

(f) Changes in legislation.

~~[(5) When tiering administrative regulations for small business concerns, administrative bodies shall use the small business size standards as defined in Section 632 of the Federal Small Business Act and Part 121 of Title Thirteen of the Code of Federal Regulations.]~~

Section 5. KRS 13A.270 is amended to read as follows:

(1) (a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (5) of this section, hold a hearing, open to the public, on the administrative regulation.

(b) The public hearing shall not be held before the twenty-first day or later than the last workday of the month in which the administrative regulation is published in the Administrative Register.

(c) The administrative body shall accept written comments regarding the administrative regulation for a period of thirty (30) days following the publication of the administrative regulation in the Administrative Register. If the thirtieth day of the comment period falls on a Saturday, Sunday, or holiday, the last day of the comment period shall be the workday following the Saturday, Sunday, or holiday.

(2) Each administrative regulation shall state:

(a) The place, time, and date of the scheduled public hearing;

(b) The manner in which interested persons shall submit their:

1. Notification of attending the public hearing; and

2. Written comments;

(c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;

(d) The deadline for submitting written comments regarding the administrative regulation in accordance with paragraph (c) of subsection (1) of this section; and

(e) The name, position, address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.

(3) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified that the administrative body has filed an administrative regulation. This registration shall be valid for a period of four (4) years from the date the form is filed with the administrative body, or until the person submits a written request to be removed from the notification list, whichever occurs first.

(b) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be mailed:

1. To every person who has filed this form with the administrative body;

2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and

3. With a cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.

(4) ***(a) If small business may be impacted by an administrative regulation, the administrative body shall e-mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the executive director of the Commission on Small Business Advocacy within one (1) working day after the date the administrative regulation is filed with the Commission.***

(b) The e-mail shall include a request from the administrative body that the Commission on Small Business Advocacy review the administrative regulation in accordance with subsection (1)(e) of Section 1 of this Act and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.

(5) (a) If a government may be impacted by an administrative regulation, the administrative body shall send, by e-mail if the government has an e-mail address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each government in the state within one (1) working day after the date the administrative regulation is filed with the Commission. If the government does not have an e-mail address, the material shall not be sent.

(b) The e-mail shall include a request from the administrative body that the government review the administrative regulation in the same manner as would the Commission on Small Business Advocacy under subsection (1)(e) of Section 1 of this Act, and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.

(6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.

(7) ~~[(5)]~~ The administrative body shall immediately notify the regulations compiler by telephone and by letter if:

(a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and

(b) No written comments have been received by the close of the last day of the public comment period.

(8) ~~[(6)]~~ (a) Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by telephone and by letter that the public hearing shall be held.

(b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by telephone and by letter that written comments have been received.

(9) ~~[(7)]~~ Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection ***(6)*** ~~[(4)]~~ of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.

(10) ~~[(8)]~~ Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

Section 6. KRS 13A.280 is amended to read as follows:

(1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and during the comment period***, including any report filed by the Commission on Small Business Advocacy in accordance with subsection (1)(e) of Section 1 of this Act and subsection (4) of Section 5 of this Act, or by a government in accordance with subsection (1)(e) of Section 1 of this Act and subsection (5) of Section 5 of this Act***.

(2) (a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the commission on or before 12 noon, eastern time, on the fifteenth day following the last day of the comment period the statement of consideration relating to the administrative regulation.

(b) If the administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration for up to thirty (30) days by notifying the Commission in writing on or before 12 noon, eastern time, of the fifteenth day following the last day of the comment period. The administrative body shall file the statement of consideration with the Commission on or before 12 noon, eastern time, no later than the forty-fifth day following the last day of the comment period.

(3) (a) If the administrative regulation is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the items specified in paragraph (b) of this subsection to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section.

(b) 1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from comments received at the public hearing and during the comment period;

2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and

3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.

(4) (a) If the administrative regulation is not amended as a result of the public hearing, or written or oral comments received, the administrative body shall file the original and five (5) copies of the statement of

consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section.

(b) If the statement of consideration is not received by the regulations compiler at least fifteen (15) working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) The format for the statement of consideration shall be as follows:

(a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;

(b) The first page of the statement of consideration shall have a two (2) inch top margin;

(c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments" or "Amended After Comments," whichever is applicable;

(d) If a hearing has been held or written comments received, the heading is to be followed by:

1. A statement setting out the date, time and place of the hearing;

2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and

3. The name and title of the representative of the promulgating administrative body;

(e) Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:

1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and

2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;

(f) Following the summary and comments, the promulgating administrative body shall:

1. Summarize the statement and the action taken by the administrative body as a result of comments received at the public hearing and during the comment period; and

2. If amended after the comment period, list the changes made to the administrative regulation in the format prescribed by KRS 13A.320(2)(c) and (d);

(g) If the promulgating administrative body amends the administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and

(h) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.

(6) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.

(7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

Section 7. This Act shall be known as the Small Business and Government Regulatory Fairness Act of 2004.

Approved April 22, 2004

CHAPTER 166

(HB 619)

AN ACT relating to the preparation of maps for the annexation, transference, or severance of land by cities.

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

Section 1. KRS 81A.470 is amended to read as follows:

(1) If the limits of a city are enlarged or reduced, the city shall, within sixty (60) days of the enlargement or reduction, cause an accurate map ***and description*** of the annexed, transferred, or severed area~~[with a metes and bounds description]~~, together with a copy of the ordinance duly certified, to be recorded in the office of the county clerk of the county or counties in which the city is located, in the office of the Secretary of State, and in the Department for Local Government. ***The map and description shall be prepared by a professional land surveyor. The documents shall depict the parcel annexed, transferred, or severed as a closed geometric figure on a plat annotated with bearings and distances, or sufficient curve data to describe each line. The professional land surveyor shall clearly state on the documents the location of the existing municipal boundary, any physical feature with which the proposed municipal boundary coincides, and a statement of the recorded deeds, plats, right-of-way plans, or other resources used to develop the documents depicting the municipal boundary.***

(2) No city which has annexed unincorporated or accepted transfer of incorporated territory may levy any tax upon the residents or property within the annexed or transferred area until the city has complied with the provisions of subsection (1) of this section, and of KRS 81A.475.

Approved April 22, 2004

CHAPTER 167

(HB 627)

AN ACT relating to the provision of broadband service.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

Whereas, the General Assembly finds and determines that:

(1) State-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky citizens, to create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000;

(2) Streamlined regulation in competitive markets encourages investment in the Commonwealth's telecommunications infrastructure;

(3) Consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace;

(4) Consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services; and

(5) Consumer protections against fraud and abuse, for the provision of affordable basic service, and for access to emergency services including enhanced 911 must continue.

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

In addition to the definitions in KRS 278.010 and KRS 278.516(2), for Sections 1 to 3 of this Act, the following definitions shall apply:

(1) "Broadband" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per second in at least one direction; or any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services. Nothing in this definition shall be construed to include any intrastate service, other than digital subscriber line service, tariffed at the commission as of July 15, 2004.

(2) "Local exchange carrier" means any company certified by the commission to provide local exchange telecommunications service in the Commonwealth on or before June 30, 1995.

SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) The provision of broadband services shall be market-based and not subject to state administrative regulation. Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:

(a) The availability of facilities or equipment used to provide broadband services; or

(b) The rates, terms or conditions for, or entry into, the provision of broadband service.

(2) Any requirement imposed upon broadband service in existence as of July 15, 2004 is hereby voided upon enactment of Sections 1 to 3 of this Act. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. Sections 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. Sections 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in Sections 1 to 3 of this Act shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in Sections 1 to 3 of this Act shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.

(3) The commission shall have jurisdiction to investigate and resolve consumer service complaints.

(4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

Section 4. (1) There is hereby created the Kentucky Broadband Task Force. The Task Force shall meet during the 2004 and 2005 Interims and examine the deployment of broadband in the Commonwealth including, but not limited to, the following aspects of provisioning broadband service: regulation, cost, access to facilities, and market competition.

(2) The Kentucky Broadband Task Force shall be a legislative task force consisting of nineteen (19) members as follows:

(a) Three (3) Senate members appointed by the Senate President;

(b) Three (3) Representatives from the House appointed by the Speaker of the House;

(c) Two (2) members representing the Public Service Commission appointed by the Legislative Research Commission from a list of six (6) persons submitted by the chairman of the Public Service Commission;

(d) Eleven (11) members shall be appointed by the Legislative Research Commission as follows:

1. One (1) member from the Office of the Governor;

2. Four (4) members representing the incumbent local exchange carriers;

3. Two (2) members representing the competitive local exchange carriers;

4. One (1) member representing Internet Service Providers;

5. One (1) member representing municipal utilities;

6. One (1) member shall be the Secretary of the Environmental and Public Protection Cabinet; and

7. One (1) member shall be the Commissioner of Public Protection.

(3) A majority of the members shall constitute a quorum. The President of the Senate and the Speaker of the House each shall appoint a co-chair from the members named from their chambers to the task force. The task force shall meet quarterly and may meet more often upon a call of the co-chair. Staff services shall be provided by the Legislative Research Commission with assistance from the Public Service Commission.

(4) An interim report of findings and recommendations shall be submitted to the Legislative Research Commission and to the Governor no later than November 15, 2004, and a final report shall be submitted no later than November 15, 2005.

(5) The Office of the New Economy shall prepare a baseline assessment of broadband deployment in the Commonwealth. The baseline assessment shall be submitted to the Legislative Research Commission and the Governor by July 1, 2004. Thereafter, the Office of the New Economy shall prepare six (6) month updates on broadband deployment to be submitted to the Legislative Research Commission and the Governor. The assessment and updates shall include, but not be limited to, the number of digital subscriber lines in the Commonwealth and their location and use. Comparable information shall also be obtained for broadband deployment through cable systems. Telephone utilities and cable service providers shall submit information to the Office of the New Economy as needed to prepare the baseline assessment and updates on broadband deployment.

(6) Provisions of this section notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 22, 2004

CHAPTER 168

(HB 633)

AN ACT relating to insurance health care benefit plans and declaring an emergency.

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

Section 1. KRS 304.17A-0952 is amended to read as follows:

Premium rates for a health benefit plan issued or renewed to an individual, a small group, or an association on or after April 10, 1998, shall be subject to the following provisions:

(1) The premium rates charged during a rating period to an individual with similar case characteristics for the same coverage, or the rates that could be charged to that individual under the rating system for that class of business, shall not vary from the index rate by more than thirty-five percent (35%) of the index rate~~[, except that the premium rates charged to an individual shall not vary from the index rate by more than fifty percent (50%) for two (2) consecutive years beginning January 1, 2001. However,]~~ upon any policy issuance or renewal, on or after January 1, 2003~~[, the maximum variation shall revert to thirty-five percent (35%) of the index rate]~~.

(2) ***Notwithstanding the thirty-five percent (35%) variance limitation in subsection (1) of this section, insurers offering an individual health benefit plan that is state-elected under sec. 35(e)(1)F of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201, may vary from the index rate by more than thirty-five percent (35%) for individuals who are eligible for the health coverage tax credit under the following conditions:***

(a) The insurer certifies that the individual does not meet the insurer's underwriting guidelines for issuance of an individual policy;

(b) The policy meets the requirements for state-elected coverage under the Trade Act of 2002; and

(c) The premium rate is actuarially justified and has been approved by the Department of Insurance pursuant to KRS 304.17A-095.

(3) The percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:

(a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;

(b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the individual and dependents as determined from the insurer's rate manual for the class of business; and

(c) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the insurer's rate manual for the class of business.

(4) ~~[(3)]~~ The premium rates charged during a rating period to a small group or to an association member with similar case characteristics for the same coverage, or the rates that could be charged to that small group or that association member under the rating system for that class of business, shall not vary from the index rate by more than fifty percent (50%) of the index rate.

(5) ~~[(4)]~~ The percentage increase in the premium rate charged to a small group or to an association member for a new rating period shall not exceed the sum of the following:

(a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;

(b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the employee, association member, or dependents as determined from the insurer's rate manual for the class of business; and

(c) Any adjustment due to change in coverage or change in the case characteristics of the small group or association member as determined from the insurer's rate manual for the class of business.

(6) ~~[(5)]~~ In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.

(7) ~~[(6)]~~ Adjustments in rates for claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, health status, and duration of coverage shall not be charged to an individual group member or the member's dependents. Any adjustment shall be applied uniformly to the rates charged for all individuals and dependents of the small group.

(8) ~~[(7)]~~ The commissioner may approve establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the additional class would enhance the efficiency and fairness for the applicable market segment.

(a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business in that market segment by more than ten percent (10%).

(b) An insurer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative cost related to the following reasons:

1. The insurer uses more than one (1) type of system for the marketing and sale of the health benefit plans;~~[or]~~

2. The insurer has acquired a class of business from another insurer***; or***

3. The insurer is offering a state-elected plan under the provisions of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201.

(c) Notwithstanding any other provision of this subsection, beginning January 1, 2001, a GAP participating insurer may establish a separate class of business for the purpose of separating guaranteed acceptance program qualified individuals from other individuals enrolled in their plan prior to January 1, 2001. The index rate for the separate class created under this paragraph shall be established taking into

consideration expected claims experience and administrative costs of the new class of business and the previous class of business.

(9) ~~[(8)]~~ For the purpose of this section, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize a restricted provider network if utilization of the restricted provider network results in substantial differences in claims costs.

(10) ~~[(9)]~~ Notwithstanding any other provision of this section, an insurer shall not be required to utilize the experience of those individuals with high-cost conditions who enrolled in its plans between July 15, 1995, and April 10, 1998, to develop the insurer's index rate for its individual policies.

(11) ~~[(10)]~~ Nothing in this section shall be construed to prevent an insurer from offering incentives to participate in a program of disease prevention or health improvement.

Section 2. Whereas immediate and special circumstances make numbers of uninsured Kentucky residents eligible for a federal health coverage tax credit, which provides for the Internal Revenue Service to subsidize sixty-five percent (65%) of these residents' health coverage premium, the current qualified health plans cannot provide coverage to many of the these residents, and insurers may offer qualified health plans if insurers are statutorily permitted to charge rates that adequately cover the increased risk associated with persons eligible for the federal health coverage tax credit, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Approved April 22, 2004

CHAPTER 169

(HB 671)

AN ACT relating to the release of information in child abuse cases.

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

Section 1. KRS 620.050 is amended to read as follows:

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

(2) Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.

(3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(4) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(5) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, except for those records provided for in subsection (6) of this section, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600;

(g) Employees or designated agents of a children's advocacy center; or

(h) Those persons so authorized by court order.

(6) (a) Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and shall not be disclosed except to the following persons:

1. Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case;

2. Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms; and

3. The court and those persons so authorized by a court order.

(b) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(7) Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse of a child.

(8) Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.

(9) Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy center.

(10) (a) An interview of a child recorded at a children's advocacy center shall not be duplicated, except that the Commonwealth's or county attorney prosecuting the case may:

1. Make and retain one (1) copy of the interview; and

2. Make one (1) copy for the defendant's counsel that the defendant's counsel shall not duplicate.

(b) The defendant's counsel shall file the copy with the court clerk at the close of the case.

(c) Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.

(d) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(11) Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:

(a) To law enforcement officials that have a legitimate interest in the case;

(b) To the agency designated by the cabinet to investigate or assess the report;

(c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or

(d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report.

(12) ***(a)*** Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.

(b) The cabinet shall conduct an internal review of any case where child abuse or neglect has resulted in a child fatality or near fatality and the cabinet had prior involvement with the child or family. The cabinet shall prepare a summary that includes an account of:

1. The cabinet's actions and any policy or personnel changes taken or to be taken, including the results of appeals, as a result of the findings from the internal review; and

2. Any cooperation, assistance, or information from any agency of the state or any other agency, institution, or facility providing services to the child or family that were requested and received by the cabinet during the investigation of a child fatality or near fatality.

(c) The cabinet shall submit a report by September 1 of each year containing an analysis of all summaries of internal reviews occurring during the previous year and an analysis of historical trends to the Governor, the General Assembly, and the state child fatality review team created under KRS 211.684.

(13) When an adult who is the subject of information made confidential by subsection (5) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5) of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.

(14) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports. These photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Approved April 22, 2004

CHAPTER 170

(HB 672)

AN ACT relating to boarding homes.

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

SECTION 1. A NEW SECTION OF KRS 216B.300 TO 216B.320 IS CREATED TO READ AS FOLLOWS:

(1) When the cabinet has reasonable cause to believe that any person, association, business entity, or organization is operating a boarding home without a registration, the cabinet may:

(a) Issue and deliver a notice to cease and desist from the violations;

(b) Issue and deliver a notice to cease and desist to any person who aids and abets the operation of a boarding home that is not registered; and

(c) Impose a civil penalty of at least one thousand dollars ($1,000) but not more than five thousand dollars ($5,000) upon the person, association, business entity, or organization that operates a boarding home that is not registered by the cabinet.

(2) Issuance of a notice under subsection (1) of this section shall not constitute agency action for which a hearing under KRS Chapter 13B may be sought.

(3) For the purpose of enforcing a cease and desist order and penalties under subsection (1) of this section, the cabinet may file a proceeding in the name of the Commonwealth seeking issuance of an injunction and enforcement of penalties against any person who violates subsection (1) of this section.

(4) In addition to the remedies under subsection (1) of this section, the cabinet may impose a civil penalty of at least one thousand dollars ($1,000) but not more than five thousand dollars ($5,000) upon the person, association, business, entity, or organization who aids and abets the operation of a boarding home that is not registered. If the cabinet is required to seek enforcement of the cease and desist order, it shall be entitled to collect attorney's fees, costs, and any expenses incurred by the cabinet or local government as a consequence of and incident to the relocation of boarders to appropriate housing.

Section 2. KRS 216B.305 is amended to read as follows:

(1) No person***, association, business entity, or organization*** shall ***advertise, solicit boarders, or*** operate a boarding home without registering, on an annual basis, in a manner and form prescribed by the secretary. ***No person who has been convicted of a crime of abuse under KRS 508.100 to 508.120 or who has had a report of abuse substantiated by the cabinet shall be registered to operate a boarding home.*** The secretary shall impose a fee, not to exceed one hundred dollars ($100), for this registration.

(2) The secretary shall adopt standards, by administrative regulation pursuant to KRS Chapter 13A, for the operation of boarding homes. The administrative regulations shall include minimum requirements in the following areas:

(a) Minimum room sizes for rooms occupied for sleeping purposes. Rooms occupied by one (1) boarding home resident shall contain at least sixty (60) square feet of floor space. Rooms occupied by more than one (1) occupant shall contain at least forty (40) square feet of floor space for each occupant;

(b) Bedding, linens, and laundry services provided to residents;

(c) Sanitary and plumbing fixtures, water supply, sewage disposal, and sanitation of the premises;

(d) Heating, lighting, and fire prevention, including the installation and maintenance of smoke detectors;

(e) Maintenance of the building;

(f) Food handling, preparation, and storage, and kitchen sanitation;

(g) ***Nutritional standards sufficient to meet the boarder's need***~~[Handling and storage of resident's prescription drugs];[and]~~

(h) Complaint procedures whereby residents may lodge complaints with the cabinet concerning the operation of the boarding home***; and***

(i) Initial and periodic screening procedures to ensure that individuals meet the definition of "boarder" under KRS 216B.300(3).

(3) Prior to the initial or annual registration of a boarding home, the cabinet shall cause an unannounced inspection to be made of the boarding home, either by cabinet personnel or through the local health department acting on behalf of the cabinet, to determine if the boarding home is in compliance with:

(a) ***Standards established in subsections (1) and (2) of this section;***

(b) Administrative regulations relating to the operation of boarding homes promulgated pursuant to subsection (2) of this section; and

(c)~~[(b)]~~ All applicable local health, fire, building, and safety codes and zoning ordinances.

(4) ***(a) A boarding home shall not be registered to any person, association, business entity, or organization that has been previously penalized for operating a boarding home without a registration or that has had a previously denied or revoked registration to operate a boarding home, for a period of five (5)***

years following the date of imposition of the previous penalty or denial or revocation of registration~~[Any boarding home found to be out of compliance with administrative regulations relating to boarding homes promulgated pursuant to subsection (2) of this section, after being provided with written notice of noncompliance and a reasonable period of time for correction, shall not be registered]~~.

(b) A boarding home operator may appeal the cabinet's denial of ***initial or annual*** registration, and an administrative hearing shall be conducted in accordance with KRS Chapter 13B. ***A hearing held for a summary suspension shall be expedited and shall be in accordance with administrative regulations promulgated by the cabinet.*** If a boarding home continues to operate in violation of administrative regulations promulgated pursuant to subsection (2) of this section, the cabinet shall institute injunctive proceedings in Circuit Court to terminate the operation of the boarding home.

(5) ***Any person, association, business entity, or organization that submits an application to register a boarding home that conceals a previously denied or revoked application or conceals a penalty received for operating a boarding home without a registration shall be liable for a civil penalty of at least one thousand dollars ($1,000) but not more than five thousand dollars ($5,000). Any registration issued in reliance upon the application concealing information shall be immediately revoked.***

(6) Initial and annual registration may be denied and existing registration may be revoked for any of the following:

(a) The boarding home fails to achieve or maintain substantial and continuing compliance with administrative regulations promulgated pursuant to subsection (2) of this section;

(b) The boarding home fails or refuses to correct violations within a reasonable time as specified by the cabinet; or

(c) The applicant for registration or the registrant has been convicted of a crime related to abuse, neglect, or exploitation of an adult or has had an incident of adult abuse, neglect, or exploitation as defined in KRS 209.020, substantiated by the cabinet.

(7) Employees or designated agents of the cabinet shall have the authority to enter at any time a boarding home or any premises suspected of operating as an unregistered boarding home for the purpose of conducting an inspection or investigating a complaint.

(8) A boarding home shall not handle, store, dispense, or assist with the dispensing of a boarder's prescription or non-prescription medications.

(9) Upon request of the boarder, the boarding home shall provide access to a lockable compartment for use by a resident who requests secure storage for prescription medication.

(10) If a boarding home fails to meet a minimum standard established in subsection (2) or (3) of this section and is in such a condition that the cabinet determines that the boarding home's continued operation poses a significant risk to the health and safety of its residents, the cabinet may summarily suspend the registration of the boarding home by ordering that its operations cease until corrections are made or until a hearing is held on the appropriateness of the suspension.

(11)~~[(6)]~~ Nothing in this section or KRS 216B.303 shall be construed to prohibit local governments from imposing requirements on boarding homes that are stricter than those imposed by administrative regulations of the Cabinet for Health Services.

Section 3. KRS 216B.990 is amended to read as follows:

(1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000) for each violation.

(2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars ($500) for each violation.

(3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.

(6) Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars ($100) per day for failure to post required notices and one hundred dollars ($100) per instance for willfully failing to provide an itemized statement within the required time frames.

(7) ***In addition to the civil penalties established under subsections (1) and (4) of Section 1 of this Act, any person who advertises, solicits boarders, or operates a boarding home without first obtaining a registration as required by KRS 216B.305 and any person who aids or abets the operation of a boarding home that is not registered shall be imprisoned for no more than twelve (12) months***~~[Any boarding home which does not register as required by KRS 216B.305 shall be fined one hundred dollars ($100) and ten dollars ($10) per day thereafter until they have registered]~~.

(8) Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars ($1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.

(9) Any hospital acting by or through its agents or employees that violates any provision of KRS 216B.150 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each violation.

Approved April 22, 2004

CHAPTER 171

(HB 685)

AN ACT relating to diabetes research.

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

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

As used in Sections 1 to 5 of this Act:

(1) "Applicant" means the entity within the University of Kentucky or University of Louisville applying for a grant award;

(2) "Board" means the Kentucky Diabetes Research Board;

(3) "Grantee" means the entity receiving a grant award;

(4) "PI" means the principal investigator; and

(5) "Trust fund" means the Kentucky Diabetes Trust Fund.

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

(1) The Kentucky Diabetes Research Board is created for the purpose of the secretary of administering the diabetes research trust fund. The board shall be composed of the secretary of the Cabinet for Health Services or the secretary's designee and seven (7) members appointed by the Governor as follows:

(a) Two (2) members representing the University of Kentucky College of Medicine;

(b) Two (2) members representing the University of Louisville School of Medicine;

(c) One (1) member who has diabetes or who has a family member with diabetes;

(d) One (1) member who is a physician with experience with research or treatment of diabetes; and

(e) One (1) at-large member who has a health care policy perspective on diabetes issues as a patient, health care provider, consultant, or in business.

(2) The term of each appointed board member shall be four (4) years. A board member shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of his or her duties.

(3) At the end of a term, a member shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed. A member who serves two (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(4) A simple majority of the full membership of the board shall constitute a quorum.

(5) The board shall elect, by a majority vote, a chairperson who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairperson shall be elected or reelected for each calendar year.

(6) The board shall meet at least two (2) times each year but may meet more frequently, subject to call by the chairperson or by request of a majority of the board members. Each board meeting shall include but not be limited to programs relating to diabetes, research progress reports, authorization of projects, and financial plans.

(7) No member of the board shall be subject to any personal liability or personal accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

(8) The board shall be attached to the Cabinet for Health Services for administrative purposes. The Cabinet for Health Services shall provide sufficient staff for the proper administration of the board.

(9) The Cabinet for Health Services shall promulgate any necessary administrative regulations in accordance with KRS Chapter 13A to implement the provisions of Sections 1 to 5 of this Act.

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

(1) The Kentucky Diabetes Research Trust Fund is hereby created. Federal funds or other funds that may be made available to supplement or match state funds for diabetes research programs may be credited to the trust fund.

(2) Funds deposited to the credit of the diabetes research trust fund shall be used to finance the diabetes research programs and for the operation of the Kentucky Diabetes Research Board. Funds for research shall only be used for diabetes research conducted by the University of Kentucky or the University of Louisville.

(3) Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year or biennium, and any surplus shall be included in the budget considered and approved by the board for the ensuing period.

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

(1) A proposed research project shall be submitted to the board on an application developed by the Cabinet for Health Services in consultation with the board. The submission deadline for the application shall be September 30 of each year.

(2) The board shall review the project proposal for scientific merit and adherence to the research priority established in this section. After reviewing the project proposal's scientific merit and adherence to the research priority, the board shall determine whether a project proposal shall or shall not be funded. An applicant shall be notified of the board's decision on the application no later than December 31 of each year.

(3) A project proposal shall be reviewed for scientific merit as follows:

(a) Adequacy of prior research and theory in providing a basis for the research;

(b) Adequacy of methods;

(c) Adequacy of environment, facilities, equipment, available equipment, and research atmosphere;

(d) Qualifications and productivity of the PI and key staff;

(e) Time commitments of the PI and key staff;

(f) Availability of subjects or patients where relevant;

(g) Adequacy of procedures for assessing the effect of interventions on recovery; and

(h) Other factors that affect the potential of the applicants to successfully address the research objectives.

(4) A project shall be reviewed by the board for adherence to research priorities relating to in vivo and in vitro studies on naturally occurring phenomena that may:

(a) Predict the development of diabetic vascular, neuronal, or musculo-skeletal complications;

(b) Define the response of diabetic vascular, neuronal, or musculo-skeletal complications to existing therapies; or

(c) Reverse diabetic vascular, neuronal, or musculo-skeletal complications.

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

(1) A research contract shall be granted for a one (1) year period, with renewal for two (2) additional years subject to the conditions established by this section. Renewal in years two (2) and three (3) shall depend upon fulfillment of contract terms.

(2) A grantee shall submit to the board an annual progress report, including a narrative and financial report of any progress.

(3) The annual progress report shall be due sixty (60) days prior to the effective date of the contract of the following year.

(4) (a) A grantee shall submit a final narrative progress report thirty (30) days after completion or termination of the contract and a financial report no later than ninety (90) days after completion or termination of the contract.

(b) The financial report shall be completed by the contracting institution.

(5) The PI shall transmit to the board a copy of any document published as a result of the funded research, during and after the period of the contract.

(6) A grantee shall acknowledge the source of funding from the trust in all publications and presentations.

Approved April 22, 2004

CHAPTER 172

(HB 703)

AN ACT relating to county detectives.

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

Section 1. KRS 69.360 is amended to read as follows:

(1) A county attorney may, as funding allows, employ one (1) or more county detectives. ***County detectives in counties containing a consolidated local government shall have the power of arrest in the county and the right to execute process statewide.*** They shall assist the county attorney in all matters pertaining to his office in the manner he designates and shall assist him in the preparation of all criminal cases in District Court by investigating the evidence and facts connected with such cases.

(2) A county detective in a county containing a consolidated local government who has the power of arrest in the county and right to execute process statewide, as set out in subsection (1) of this section, shall be certified in accordance with KRS 15.380 to KRS 15.404.

Section 2. KRS 15.380 is amended to read as follows:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

(a) State Police officers, but for the commissioner of the State Police;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;~~[and]~~

(h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040***; and***

(i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with Section 1 of this Act.

(2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;

(g) Private security officers;

(h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and

(i) Investigators employed by the Division of Charitable Gaming in accordance with KRS 238.510.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables;

(d) Jailers;

(e) Racing Commission security officers employed under KRS 230.240; and

(f) Commissioner of the State Police.

(6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

Approved April 22, 2004.

CHAPTER 173

(HB 708)

AN ACT relating to horse racing.

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

Section 1. KRS 230.443 is amended to read as follows:

~~[No]~~Quarter ***horses, Appaloosas, and Arabian horses*** ~~[horse or Appaloosa]~~ foaled by artificial insemination ***or other means*** shall be eligible to race under the provisions of this chapter~~[, but Arabian horses foaled by artificial insemination shall be eligible to race under the provisions of this chapter]~~.

SECTION 2. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 to 7 of this Act, unless the context requires otherwise:

(1) "Hub" means an international wagering hub, a business which, through a qualified subscriber-based service, conducts pari-mutuel wagering on the horse races that it simulcasts and other races that it carries in its wagering menu;

(2) "Qualified subscriber-based service" means any information service or system, including but not limited to a closed-loop system, that uses:

(a) A device or combination of devices authorized and operated exclusively for placing, receiving, or otherwise making pari-mutuel wagers on horse races by a customer subscriber base through accounts established with the operator of the hub;

(b) An effective customer verification and age verification system; and

(c) Appropriate data security standards to prevent unauthorized access by nonsubscribers or minors;

(3) "Foreign jurisdiction" means states other than Kentucky, a territory of the United States, a foreign country, or any political subdivision thereof;

(4) "Commission" means the Kentucky Racing Commission or its successor authority; and

(5) "Call center" means that portion of a qualified subscriber-based service that is physically located in the Commonwealth, where wagers are placed, received, or otherwise made by a customer subscriber base through accounts established with the operator of the hub.

SECTION 3. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in Sections 2 to 7 of this Act, the provisions of KRS 230.378, 230.379, and 230.380 shall apply to the establishment of authorized hub accounts for residents of the Commonwealth of Kentucky.

(2) Accounts may be established for individuals outside of the Commonwealth of Kentucky, including foreign jurisdictions, if:

(a) Pari-mutuel wagering on horse racing is lawful in the jurisdiction of the account holder's principal residence; and

(b) The hub complies with the Interstate Horse Racing Act, 15 U.S.C. secs. 3001 to 3007. The call center used in the operations of the hub shall not be located on state property. No more than four (4) hubs shall be licensed in the Commonwealth at any one (1) time.

SECTION 4. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding KRS 230.361(1), a licensee may operate the hub either independently or in association with one (1) or more racetracks licensed by the commission to run live races and conduct pari-mutuel wagering in Kentucky. Hub operations may be physically located on property other than that operated by a

racetrack and may accept wagers at that location and shall comply with the Interstate Horseracing Act, 15 U.S.C. secs. 3001 to 3007.

(2) As a part of the application for licensure as a hub, an applicant shall submit a detailed plan of operations in a format and containing any information as required by the commission. The application shall be accompanied by an application fee to cover incremental costs to the commission, in an amount the commission determines to be appropriate. At a minimum, the operating plan shall address the following:

(a) The manner in which the proposed wagering system will operate, including its proposed operating schedule;

(b) The requirements for a qualified subscriber-based service set out in Section 2 of this Act; and

(c) The requirements for accounts established and operated for persons whose principal residence is outside of the Commonwealth of Kentucky.

(3) The commission may require changes in a proposed plan of operations as a condition of licensure. Subsequent material changes in the system's operation shall not occur unless approved by the commission.

(4) The commission may conduct investigations or inspections or request additional information from any applicant as it deems appropriate in determining whether to approve the license application.

(5) An applicant licensed under this section may enter into any agreements that are necessary to promote, advertise, and further the sport of horse racing, or for the effective operation of hub operations, including, without limitation, interstate account wagering, television production, and telecommunications services.

(6) The commission shall promulgate administrative regulations to effectuate the provisions of Sections 2 to 7 of this Act. The administrative regulations shall include but not be limited to criteria for licensing, the application process, the format for the plan of operations, requisite fees, procedures for notifying the commission of substantive changes, contents of agreements entered into under subsection (5) of this section, procedures for accounting for wagers made, and other matters reasonably necessary to implement Sections 2 to 7 of this Act.

(7) The commission may require the hub to make the following payments to the commission:

(a) A license fee not to exceed two hundred dollars ($200) per operating day; and

(b) A fee of not more than one percent (1%) of the hub's total gross wagering receipts.

(8) A hub's records and financial information shall not be subject to the provisions of KRS 61.870 to 61.884.

(9) The Auditor of Public Accounts may review and audit all records and financial information of the hub, including all account information. The Auditor shall prepare a report of the review and audit which shall not contain any proprietary information regarding the hub. A copy of the report shall be sent to the Legislative Research Commission for referral to the appropriate committee.

SECTION 5. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in subsection (7) of Section 4 of this Act, the operator of a hub shall not be subject to any fee or tax imposed on racetracks or simulcast facilities under KRS 137.170, 138.480, 138.510, or Chapter 230 for the hub operator's wagering and simulcast operations established under Sections 2 to 7 of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

(1) Any wager that is made for an account maintained with the hub operator shall be considered to have been made in the Commonwealth of Kentucky.

(2) Account holders may communicate instructions concerning account wagers to the hub only by telephonic or other electronic means.

(3) None of the following wagers shall be processed through a hub:

(a) A wager on live racing accepted by a track;

(b) A telephone account wager accepted by a track;

(c) An intertrack wager accepted by a receiving track or simulcast facility; or

(d) An interstate wager accepted by a receiving track or simulcast facility.

(4) Any hub that processes any of the wagers delineated in subsection (3) of this section from a track, receiving track, or simulcast facility shall be subject to revocation of its hub license.

(5) Except as provided in Section 8 of this Act, nothing in Sections 2 to 7 of this Act shall exempt racetracks or simulcast facilities from any taxes imposed under KRS 137.170, 138.480, 138.510, or Chapter 230.

SECTION 7. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

The commission or its staff shall, upon request, be given access, for review and audit, to all records and financial information of the hub operator, including all account information. The commission may require that the hub operator annually submit to the commission audited financial statements.

SECTION 8. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

All harness racetracks licensed by the commission shall not be required to pay the excise tax imposed under KRS 138.510(2) and (3) and that amount that would have been paid under that subsection shall be retained by the track to promote and maintain its facilities and its live meet.

Approved April 22, 2004

CHAPTER 174

(HCR 27)

A CONCURRENT RESOLUTION confirming the reappointment of Sam Lawson to the Kentucky Agricultural Development Board.

WHEREAS, KRS 248.707 requires the Governor to appoint members to the Agricultural Development Board subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on August 22, 2003, by Executive Order 2003-866, the Governor reappointed Sam Lawson to the Agricultural Development Board for a term expiring July 6, 2007; and

WHEREAS, Sam Lawson has been reappointed as meeting the requirements of KRS 248.707, being an agribusiness person who is a member of the Kentucky Chamber of Commerce and who otherwise meets the requirements of KRS 11.160;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. Consent is given to the reappointment of Sam Lawson to the Agricultural Development Board for a term expiring July 6, 2007.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution and notification of its adoption to Sam Lawson, 395 Briggs Hill Road, Bowling Green, Kentucky 42101 and to the Governor.

Approved April 22, 2004

CHAPTER 175

(HCR 63)

A CONCURRENT RESOLUTION confirming the appointment of Stephen C. Cawood to the Mine Safety Review Commission.

WHEREAS, KRS 351.1041 requires the Governor to appoint commissioners to the Mine Safety Review Commission; and

WHEREAS, in accordance with KRS 11.160 all Gubernatorial appointments to boards and commissions are subject to confirmation by the Senate and the House of Representatives; and

WHEREAS, on June 5, 2003, by Executive Order 2003-565, the Governor appointed Stephen C. Cawood as a member of the Mine Safety Review Commission; and

WHEREAS, Mr. Stephen C. Cawood meets the requirements of KRS 351.1041 which states that appointed members shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. Consent is given to the appointment of Stephen C. Cawood to the Mine Safety Review Commission for a term to expire on May 23, 2004.

Section 2. The Clerk of the House of Representatives shall forward a copy of this Resolution and notification of its adoption to Mr. Stephen C. Cawood, 344 Tennessee Ave, P.O. Drawer 128, Pineville, KY, 40977-0128.

Approved April 22, 2004

CHAPTER 176

(HJR 113)

A JOINT RESOLUTION directing the Department of Corrections, the Cabinet for Economic Development, the Finance and Administration Cabinet, and the Pennyrile Westpark Industrial Development Authority to facilitate the potential sale of the Pennyrile Westpark Industrial Park for the purpose of economic development within the Commonwealth.

WHEREAS, the Department of Corrections, the Cabinet for Economic Development, the Finance and Administration Cabinet, and the Pennyrile Westpark Industrial Development Authority have agreed to designate the Pennyrile Westpark Industrial Park as surplus to the needs of the Commonwealth; and

WHEREAS the aforementioned parties have further agreed to market and, if appropriate, sell the Pennyrile Westpark Industrial Park to a private developer for a single economic development project;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Department of Corrections within the Justice Cabinet shall:

(1) Declare as surplus to its needs, pursuant to 45A.045(4), the Pennyrile Westpark Industrial Park. For the purposes of this Act, and until surveyed pursuant to Section 3 of this Act, the Pennyrile Westpark Industrial Park shall mean Tract 5 of the West Kentucky Correctional Complex in Lyon County, consisting of 531.4 acres, as identified by a survey of Florence & Hutcheson Consulting Engineers on October 24, 1991, for the Finance and Administration Cabinet. Upon completion of the survey pursuant to Section 3 of this Act, the Pennyrile Westpark Industrial Park shall be defined according to the survey. The survey's definition may not include Tract 5 in its entirety, may include a portion of Tract 1, but shall not exceed 531.4 acres;

(2) Upon approval of a project to locate within the Pennyrile Westpark Industrial Park by the Kentucky Economic Development Finance Authority and the Finance and Administration Cabinet pursuant to Section 3 and Section 5 of this Act, transfer the Pennyrile Westpark Industrial Park to the approved buyer at a price established by the Finance and Administration Cabinet pursuant to Section 3 of this Act; and

(3) Cooperate with the parties identified in this Act in order to facilitate the directives set forth in this Act.

Section 2. The Cabinet for Economic Development shall:

(1) Assist in the marketing of the Pennyrile Westpark Industrial Park by listing it in the Cabinet's database and on the Cabinet's website, and by making potential buyers aware of its availability;

(2) Review and make recommendations on the potential purchase of the Pennyrile Westpark Industrial Park, based on the purchase requirements set forth in Section 5 of this Act; and

(3) Cooperate with the parties identified in this Act in order to facilitate the directives set forth in this Act.

Section 3. The Finance and Administration Cabinet shall:

(1) Require and obtain, in cooperation with the Pennyrile Westpark Industrial Development Authority, a survey and exact legal description of the Pennyrile Westpark Industrial Park;

(2) Upon completion of the survey pursuant to this section, require and obtain a fair market value appraisal or appraisals of the Pennyrile Westpark Industrial Park;

(3) Upon completion of the appraisal or appraisals pursuant to this section, establish a minimum sale price equal to the fair market appraised value, and communicate the minimum sale price to the Cabinet for Economic Development and the Pennyrile Westpark Industrial Development Authority;

(4) Designate the Pennyrile Westpark Industrial Park, as defined in the survey required by this section, as surplus to the needs of the Commonwealth pursuant to KRS 45A.045. Notwithstanding KRS 45A.045(4), the Secretary of the Finance and Administration Cabinet shall sell the Pennyrile Westpark Industrial Park pursuant to the provisions of this section;

(5) In conjunction with the Department of Corrections, review any proposed sale of the Pennyrile Westpark Industrial Park, as recommended by the Cabinet for Economic Development and the Pennyrile Westpark Industrial Development Authority, and determine if:

(a) The proposed purchase price meets the minimum sale price pursuant to subsection (3) of this section; and

(b) The proposed operations do not interfere with the operations of the Western Kentucky Correctional Farm Complex;

(6) If the proposed project is approved by the Kentucky Economic Development Finance Authority, and if the requirements in subsection (5) of this section are met, oversee the execution of an appropriate contract for the sale of the Pennyrile Westpark Industrial Park, pursuant to KRS 45A.045(4); and

(7) Cooperate with the parties identified in this Act in order to facilitate the directives set forth in this Act.

Section 4. The Pennyrile Westpark Industrial Development Authority shall:

(1) Market the Pennyrile Westpark Industrial Park to private industrial developers in accordance with the minimum sale price set forth in subsection (3) of Section 3 of this Act and in accordance with the purchase requirement set forth in Section 5 of this Act;

(2) If necessary, and if approved by the Department of Corrections and by the Finance and Administration Cabinet, conduct appropriate activities on the sale site for the purposes of marketing the Pennyrile Westpark Industrial Park, including but not limited to engineering studies and aerial photography;

(3) Upon its approval of a potential buyer of the Pennyrile Westpark Industrial Park, transmit all appropriate documents regarding the proposed project to the Economic Development Cabinet for review; and

(4) Cooperate with the parties identified in this Act in order to facilitate the directives set forth in this Act.

Section 5. As a condition of the sale of the Pennyrile Westpark Industrial Park, the Kentucky Economic Development Finance Authority shall approve the proposed project, as recommended by the Pennyrile Westpark Industrial Development Authority and reviewed by the Cabinet for Economic Development, based on the requirement that it be a single economic development project which, based upon size and magnitude alone, could not locate within any existing publicly owned industrial park in Caldwell, Crittenden, Livingston, Lyon, or Trigg Counties.

Section 6. From the effective date of this Act until 30 days prior to the date that the title to the Pennyrile Westpark Industrial Park is transferred, the Department of Corrections may conduct its current on-site operations, or any other operation the department deems necessary for continuation of its present activities at the Pennyrile Westpark Industrial Park. Within 30 days prior to the sale of the property, the department shall conclude all operations at the Pennyrile Westpark Industrial Park. At the point of sale, the Pennyrile Westpark Industrial Park shall be cleared of any equipment the department desires to claim, and all department activity on the Pennyrile Westpark Industrial Park shall permanently cease.

Approved April 22, 2004

CHAPTER 177

(HCR 120)

A CONCURRENT RESOLUTION confirming the appointment of Bonnie Lash Freeman to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed by Executive Order 2004-129 Bonnie Lash Freeman as a member of the Kentucky Board of Education representing the state at large for a term expiring April 14, 2008; and

WHEREAS, by letter dated January 30, 2004, the Governor has delivered Bonnie Lash Freeman's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Bonnie Lash Freeman meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Bonnie Lash Freeman to the Kentucky Board of Education for a term ending April 14, 2008.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and Bonnie Lash Freeman, 3617 Northwestern Parkway, Louisville, Kentucky 40212, in writing, of the General Assembly's action.

Approved April 22, 2004

CHAPTER 178

(HCR 121)

A CONCURRENT RESOLUTION confirming the appointment of David B. Rhodes to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed by Executive Order 2004-129 David B. Rhodes as a member of the Kentucky Board of Education representing the state at large for a term expiring April 14, 2008; and

WHEREAS, by letter dated January 30, 2004, the Governor has delivered David B. Rhodes' name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that David B. Rhodes upon his resignation from the Montgomery County Board of Education will meet the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of David B. Rhodes to the Kentucky Board of Education for a term ending April 14, 2008.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and David B. Rhodes, 1308 Country Meadow Lane, Mount Sterling, Kentucky 40353, in writing, of the General Assembly's action.

Approved April 22, 2004

CHAPTER 179

(HCR 122)

A CONCURRENT RESOLUTION confirming the appointment of Janna P. Vice to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed by Executive Order 2004-129 Janna P. Vice as a member of the Kentucky Board of Education representing the state at large for a term expiring April 14, 2008; and

WHEREAS, by letter dated January 30, 2004, the Governor has delivered Janna P. Vice's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that Janna P. Vice meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of Janna P. Vice to the Kentucky Board of Education for a term ending April 14, 2008.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and Janna P. Vice, Ed.D., 3509 Old Kentucky Highway 52, Richmond, Kentucky 40475, in writing of the General Assembly's action.

Approved April 22, 2004

CHAPTER 180

(HCR 123)

A CONCURRENT RESOLUTION confirming the appointment of David L. Webb to the Kentucky Board of Education.

WHEREAS, pursuant to KRS 156.029, the Governor has appointed by Executive Order 2004-129 David L. Webb as a member of the Kentucky Board of Education representing the state at large for a term expiring April 14, 2008; and

WHEREAS, by letter dated January 30, 2004, the Governor has delivered David L. Webb's name for confirmation as a member of the board, as required by KRS 11.160; and

WHEREAS, the House of Representatives and the Senate find that David L. Webb meets the requirements established in KRS 156.029 and 156.040 for membership on the Kentucky Board of Education;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The House of Representatives and the Senate hereby confirm the appointment of David L. Webb to the Kentucky Board of Education for a term ending April 14, 2008.

Section 2. The Clerk of the House of Representatives, pursuant to KRS 11.160(2), shall notify Governor Ernie Fletcher, Room 100, State Capitol, Frankfort, Kentucky 40601 and David L. Webb, Post Office Box 545, Brownsville, Kentucky 42210, in writing, of the General Assembly's action.

Approved April 22, 2004

CHAPTER 181

(HJR 136)

A JOINT RESOLUTION urging the Secretary of the Cabinet for Health and Family Services and the Department for Medicaid Services to implement an Omnibus Medicaid Modernization Program.

WHEREAS, the Kentucky Medicaid Program has experienced considerable cost growth in recent years as it has expanded to provide health care coverage for nearly 670,000 citizens of the Commonwealth; and

WHEREAS, Kentucky expends a disproportionate amount of money on certain high-cost diseases that may be better controlled through a comprehensive education and management approach; and

WHEREAS, recipients' knowledge and education about their health conditions and input with treatment decisions will enable recipients to receive the most appropriate and highest-quality care; and

WHEREAS, Medicaid recipients average more than twice the number of prescriptions each year compared to the national average. Approximately 240,000 recipients in the outpatient pharmacy program take eight or more prescription medications each month, and national studies suggest that persons taking eight or more prescription medications each month are more likely to have an adverse reaction; and

WHEREAS, the use of reliable and complete data will provide the department with information necessary to analyze and modernize the Medicaid program while also improving the quality of care and reducing risks associated with inappropriate care; and

WHEREAS, the Governor's Office and cabinet departments associated with management of the Medicaid program have a critical need to upgrade the program's administrative capabilities consistent with other states' Medicaid programs and consistent with the Commonwealth's commercial health care market;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Medicaid program shall embark on an omnibus plan to modernize Medicaid through improvements in technology, advanced medical management initiatives, and improved benefit management approaches. The impact of these efforts will serve to improve the health care received and overall health status of the Medicaid population. This modernization may be centered on three areas: (1) Technology Improvement, (2) Care Management, and (3) Benefit Management.

Section 2. To improve technology, the Department for Medicaid Services may:

(1) Assess the computer systems technology that supports the Medicaid program. This integral component of Medicaid modernization may include a review of the program's claims processing, eligibility management, and reporting capabilities both internally and through contracted agents; and

(2) Create a data warehouse to capture demographic and utilization data on the full spectrum of the Medicaid program. The data warehouse may allow for the accurate and timely retrieval of data in a readily accessible format. The data may be utilized to track programmatic trends and monitor the progress of new initiatives.

Section 3. To improve care management, the Department for Medicaid Services may:

(1) Institute a disease management initiative. This initiative may contain the following components:

  (a) Member education. Member education may provide for instruction to Medicaid recipients about the causes and triggers of the medical conditions that are targeted by the initiative and the available treatment options for the conditions. Education may assist recipients with information about appropriate access of the health care system and identifying alternatives to emergency room care for nonemergency conditions; and

  (b) Case management. Case management may involve the use of a team of medical professionals who may answer questions, give information, and offer medical advice;

(2) Institute a self-directed care initiative. This initiative may combine educational and delivery system approaches to create consumer-driven health care, including but not limited to Cash and Counseling, that empowers the Medicaid recipient to be an informed participant in the dollar distribution of his or her care management by making more care decisions, thereby facilitating improved accountability and quality of care; and

(3) Institute a utilization management initiative. This initiative may include a review of the department's utilization review processes to determine whether they conform to industry standards and are the most cost-effective means of achieving those standards. The review may include an analysis and update to any contract with a peer review organization, with the goal of implementing utilization review approaches that are consistent with industry standards.

Section 4. To improve benefit management, the Department for Medicaid Services may:

(1) Institute pharmacy benefit management. This initiative may include the selection of a pharmacy benefit management firm and implementation of a pharmacy benefit management program to ensure appropriate oversight, appropriate pharmacy usage levels, management, and reporting within the outpatient pharmacy program; and

(2) Empower the Pharmacy and Therapeutics Advisory Committee. This committee, which assists the department with decisions about appropriate utilization and authorization requirements of prescription medications in the outpatient pharmacy program, may be given increased responsibility with management of the preferred drug list; and

(3) Secure supplemental rebates. The department may work with the Pharmacy and Therapeutics Advisory Committee and a pharmacy benefit management firm to develop systems to allow the department to secure additional financial rebates from pharmaceutical manufacturers.

Section 5. This Act shall be known as the Omnibus Medicaid Modernization Program Act of 2004.

Approved April 22, 2004

CHAPTER 182

(HCR 190)

A CONCURRENT RESOLUTION reauthorizing the Task Force on Funding for Wildlife Conservation.

WHEREAS, the Task Force on Funding for Wildlife Conservation was authorized by the 1996 General Assembly and reauthorized in 1998, 2000, and 2002; and

WHEREAS, wildlife-related tourism is a strong economic factor in the Commonwealth; and

WHEREAS, a stable funding source is needed for fish and wildlife work which currently receives no general fund money; and

WHEREAS, important issues in this area will require the oversight and continued attention of this task force;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Task Force on Funding for Wildlife Conservation is reauthorized with 16 members to meet during the 2004 and 2005 interims. The Task Force shall convene not less than twice each year.

Section 2. The task force shall report its findings each year to the Interim Joint Committee on Agriculture and Natural Resources and the Interim Joint Committee on Appropriations and Revenue before December 1, 2004 and December 1, 2005.

Section 3. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 22, 2004

CHAPTER 183

(HJR 207)

A JOINT RESOLUTION directing the Personnel Cabinet to study the feasibility of using a health reimbursement arrangement to supplement state employee health insurance.

WHEREAS, the General Assembly recognizes the rising cost of health insurance provided to state employees; and

WHEREAS, Section 105 of the Internal Revenue Code permits employers to provide reimbursement to employees for certain medical expenses using tax-free dollars through the establishment of health reimbursement arrangements; and

WHEREAS, recent rulings by the Internal Revenue Service have expanded the potential uses of health reimbursement arrangements in conjunction with cafeteria plans and health insurance coverage; and

WHEREAS, the use of health reimbursement arrangements may encourage greater discretion by employees in the use of medical services and reduce employer costs; and

WHEREAS, the Commonwealth has a responsibility to its employees to ensure adequate medical coverage while making the most efficient use of taxpayer dollars;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Personnel Cabinet, or its successor agency, in conjunction with the Kentucky Group Health Insurance Board shall conduct a study to determine if a health reimbursement arrangement would provide a benefit to employees and reduce employer costs for health insurance.

Section 2. The Kentucky Group Health Insurance Board shall include the findings of the study in its annual report submitted to the Governor, General Assembly, and Chief Justice of the Supreme Court by October 1, 2004.

Approved April 22, 2004

CHAPTER 184

(HJR 218)

A JOINT RESOLUTION reauthorizing the Kentucky Aquaculture Task Force, and making an appropriation therefor.

WHEREAS, the Kentucky Aquaculture Task Force was created in 1998 by the General Assembly to develop a State Aquaculture Plan and to promote the development of the aquaculture industry in the Commonwealth; and

WHEREAS, the aquaculture industry has steadily grown in the state, and money has been appropriated to assist aquaculture farmers in pond construction, infrastructure development, and other aquacultural enterprises; and

WHEREAS, the task force has been proactively supporting the development of the aquaculture industry in the Commonwealth; and

WHEREAS, it is essential that the task force continue to monitor the activities surrounding the implementation of the state plan, while at the same time developing and updating the plan as the aquaculture industry grows and changes;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Aquaculture Task Force is reauthorized to develop an updated State Aquaculture Plan and to continue promoting the development of the aquaculture industry in the Commonwealth.

Section 2. The Kentucky Aquaculture Task Force is attached to the Department of Agriculture for administrative purposes, and shall consist of fifteen (15) members as follows:

(1) The Speaker of the House of Representatives or the Speaker's designee;

(2) The President of the Senate or the President's designee;

(3) The Chair of the Senate Agriculture and Natural Resources Committee or the Chair's designee;

(4) The Chair of the House Agriculture and Small Business Committee or the Chair's designee;

(5) The Commissioner of the Department of Agriculture or the Commissioner's designee;

(6) The Commissioner of the Department of Fish and Wildlife Resources or the Commissioner's designee;

(7) Four (4) members of the Kentucky Aquaculture Association representing the four (4) geographic regions of the state as defined in the original State Aquaculture Plan and appointed by the board of the association; and

(8) Five (5) members appointed by the Governor, with one (1) member representing each of the following interests:

(a) Kentucky State University aquaculture program;

(b) Kentucky Farm Bureau;

(c) Agriculture liaison, Office of the Governor;

(d) Retailers of aquacultural products; and

(e) Wholesalers of aquacultural products.

Section 3. A majority of the members shall constitute a quorum. The members shall elect one (1) member to serve as chair.

Section 4. The task force shall meet quarterly and may meet more often upon the call of the chair or by a majority of the members. Except as provided in KRS 18A.200, members of the task force shall receive actual traveling expenses while attending meetings of the task force. Staff services for the task force shall be provided by the Department of Agriculture.

Section 5. Because of the success of the programs that resulted from the original state plan, the task force shall develop an updated State Aquaculture Plan by September 1, 2005, and shall report on the plan and make recommendations to the Governor and to the Legislative Research Commission with respect to aquacultural policies and practices that result in the proper management, use, and marketing of the state's aquacultural industry. These policies and practices shall, at a minimum, identify and address the following:

(1) Regulatory constraints and environmental awareness;

(2) Support for and promotion of the aquaculture industry and its products;

(3) Research, extension, and education;

(4) Financial aspects of aquaculture; and

(5) Infrastructure needs.

Section 6. There is appropriated from the general fund the sum of $30,000 to accomplish the development of a new plan; $15,000 to be appropriated in fiscal year 2004-2005 and $15,000 to be appropriated in fiscal year 2005-2006. Any amount remaining following the completion of the plan shall lapse to the general fund. The study shall begin not later than August 1, 2004, and the report and recommendations shall be submitted to the Governor and to the Legislative Research Commission no later than September 1, 2005.

Approved April 22, 2004

CHAPTER 185

(SB 52)

AN ACT relating to children.

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

Section 1. KRS 610.345 is amended to read as follows:

(1) When a child is adjudicated guilty of an offense which classifies him ***or her*** as a youthful offender, ***the judge in*** the court in which the matter was tried shall ***direct the clerk to*** notify the ***superintendent of the public school district in which the child is enrolled or the*** principal of any~~[public or]~~ private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the ***school district or the*** school, the court, if it deems it appropriate, may authorize the county attorney to give the ***school district or the*** school a statement of facts in the case. ***The superintendent shall notify the principal of the school in which the child is enrolled.***

(2) When a child is adjudicated guilty of an offense which would classify him ***or her*** as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if committed by an adult, but which would not classify him ***or her*** as a youthful offender, ***the judge in*** the court in which the matter was tried shall ***direct the clerk to*** notify within five (5) days of the order the ***superintendent of the public school district in which the child is enrolled or the*** principal of any~~[public or]~~ private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. Upon written request of the authorized representative of the ***school district or the*** school, the court, if it deems it appropriate, may authorize the county attorney to give the ***school district or the*** school a statement of facts in the case. ***The superintendent shall notify the principal of the school in which the child is enrolled.***

(3) When a petition is filed against a child, or a child is adjudicated guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involves a controlled substance or the possession, carrying, or use of a deadly weapon, or physical injury to another person, ***the judge in*** the court in which the matter is considered shall ***direct the clerk to*** notify the ***superintendent of the public school district in which the child is enrolled or the*** principal of any~~[public or]~~ private elementary or secondary school that the child attends of the charge, the adjudication, and the disposition of the case. ***The notification shall be made within twenty-four (24) hours of the time when the petition is filed.*** The name of the complainant shall be deleted. Upon written request of the authorized representative of the ***school district or the*** school, the court, if it deems it appropriate, may authorize the county attorney to give the ***school district or the*** school a statement of the facts in the case, not to include the complainant's name. ***If the petition is dismissed, all records of the incident or notification created in the school district or the school under this subsection shall be destroyed, and shall not be included in the child's school records.***

(4) Notice of adjudication to ***a district superintendent***~~[the school principal]~~ referenced in subsections (1)***,***~~[and]~~ (2)***, and (3)*** of this section shall be released by ***the superintendent to*** the principal***. A principal of a public or private school receiving notice of adjudication shall release the information*** to employees of the school having responsibility for classroom instruction ***or counseling*** of the child and may ***release it***~~[be released]~~ to other school personnel as described in subsection (5) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.

(5) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to ***a district superintendent,*** public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher or school employee with whom the student may come in contact. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.

(6) The Department of Juvenile Justice shall provide a child's offense history information pursuant to this section to the superintendent of the local school district in which the child, who is committed to the department, is placed.

(7) Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

Section 2. KRS 158.155 is amended to read as follows:

(1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, ***principal,*** or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student

has been ***adjudicated guilty or*** expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. ***The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.***

(2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.

(3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.

(4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or Kentucky State Police, by telephone or otherwise, if:

(a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:

1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:

a. Carrying, possession, or use of a deadly weapon; or

b. Use, possession, or sale of controlled substances; or

2. Any felony offense under the laws of this Commonwealth; and

(b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.

(5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.

(6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.

(7) Nothing in this section shall be construed as to require self-incrimination.

(8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:

(a) Making the report; and

(b) Participating in any judicial proceeding that resulted from the report.

Approved April 22, 2004

CHAPTER 186

(SB 75)

AN ACT relating to private investigators and declaring an emergency.

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

Section 1. KRS 329A.020 is amended to read as follows:

(1) The Kentucky Board of Licensure for Private Investigators is hereby created.

(2) The board shall consist of seven (7) members appointed by the Governor.

(a) One (1) member shall be an attorney from the Office of the Attorney General to be designated by the Attorney General;

(b) One (1) member shall be a municipal police officer of the rank of captain or above;

(c) One (1) member shall be a county sheriff;

(d) Three (3) members shall each have been private investigators for at least five (5) years prior to the date of their appointment and shall be of recognized business standing; and

(e) One (1) member shall be a citizen at large who is not associated with or financially interested in the practice of private investigating.

(3) All members shall be residents of this state and possess good moral character.

(4) The original members of the board shall be appointed by no later than January 1, 2003, as follows:

(a) One (1) member to a one (1) year term;

(b) Two (2) members to a two (2) year term;

(c) Two (2) members to a three (3) year term; and

(d) Two (2) members to a four (4) year term.

(5) After the initial appointments to the board, all members shall serve a two (2) year term.

(6) Any vacancy occurring on the board shall be filled by the Governor.

(7) No member may serve more than two (2) full consecutive terms.

(8) ***No member shall continue to serve if the member no longer meets the qualifications required under subsections (2) and (3) of this section.***

(9) The three (3) board members who are private investigators and the member at large shall receive the sum of one hundred dollars ($100) per day for each day the board meets. All members shall receive reimbursement for actual and necessary expenses incurred in the performance of their official duties.

(10) ~~[(9)]~~ The board shall annually elect a chairman, a vice chairman, and a secretary-treasurer from the membership of the board.

(11) ~~[(10)]~~ The board shall hold at least two (2) meetings annually and additional meetings as the board may deem necessary. Additional meetings may be held upon call of the chairman or upon written request of a quorum. Four (4) members of the board shall constitute a quorum to conduct business.

(12) ~~[(11)]~~ Upon recommendation of the board, the Governor may remove any member of the board for neglect of duty or malfeasance in office.

(13) ~~[(12)]~~ The board may purchase professional liability insurance for the board members and agents and staff of the board.

Section 2. KRS 329A.025 is amended to read as follows:

(1) The board shall administer and enforce the provisions of KRS 329A.010 to 329A.090 and shall evaluate the qualifications of applicants for licensure and issue licenses.

(2) The board shall:

(a) Implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A;

(b) Promulgate administrative regulations to establish fees which shall not exceed the amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 329A.010 to 329A.090;

(c) Promulgate by administrative regulation an examination to be administered at least twice annually to license applicants. The examination shall be designed to measure knowledge and competence in private investigating, including but not limited to the following subject areas:

1. Federal and state constitutional principles;

2. Court decisions related to activities which could result in liability for the invasion of privacy or other activities;

3. Eavesdropping and related offenses, assault and related offenses, search and seizure laws, and laws regarding unlawful access to a computer;

4. General weapons use and concealed weapons laws;

5. Additional state criminal laws and related procedures that are relevant to the practice of private investigating; and

6. Additional subject areas as determined by the board; and

(d) Promulgate by administrative regulation a code of professional practice and conduct that shall be based upon generally recognized principles of professional ethical conduct and be binding upon all licensees.

(3) The board may:

(a) Contract with the Division of Occupations and Professions within the Finance and Administration Cabinet for the provision of administrative services;

(b) Employ any persons it deems necessary to carry on the work of the board. The board may define their duties and fix their compensation;

(c) Develop or sponsor at least six (6) hours of continuing professional education annually;

(d) Approve and certify a forty (40) hour training class covering the subject areas of the licensing examination;

(e) Renew licenses and require continuing professional education as a condition for renewal;

(f) ***Waive the examination requirement for any applicant licensed in a reciprocal state as prescribed in subsection (3)(m) of this section, who is licensed in good standing in that state and meets all of the other requirements of Section 3 of this Act;***

(g) Suspend or revoke licenses, impose supervisory or probationary conditions upon licensees, impose administrative disciplinary fines, or issue written admonishments or reprimands, or any combination thereof;

(h)~~[(g)]~~ Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 329A.010 to 329A.090;

(i)~~[(h)]~~ Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the board's functions;

(j)~~[(i)]~~ Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one (1) particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B;

(k)~~[(j)]~~ Utilize mediation as a technique to resolve disciplinary matters;

(l)~~[(k)]~~ Seek injunctive relief in the Circuit Court of the county where the alleged unlawful practice occurred to stop the unlawful practice of private investigating by unlicensed persons or companies; and

(m)~~[(l)]~~ Negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigation companies and private investigators who meet or exceed the qualifications established in KRS 329A.010 to 329A.090 to operate across state lines under mutually acceptable terms.

Section 3. KRS 329A.035 is amended to read as follows:

(1) An application for a private investigator license shall be filed with the board on the prescribed form.

(a) The application shall include the following information regarding the applicant:

1. Full name and address;

2. Date and place of birth;

3. Social Security number;

4. All residences during the past five (5) years;

5. All employment or occupations engaged in during the past five (5) years;

6. Three (3) sets of classifiable fingerprints; ***and***

7.~~[Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and~~

~~8.]~~ Any other information as the board may reasonably require by administrative regulation.

(b) The application shall be subscribed and sworn to by the applicant.

(c) If the applicant intends to conduct fire or arson investigations, proof of current national certification from the National Association of Fire Investigators or the International Association of Arson Investigators shall be filed with the board in addition to the information required in paragraph (a) of this subsection.

(2) An application for an investigating company license shall be filed with the board on the prescribed form.

(a) The application shall include:

1. The information required in subsection (1)(a) of this section for:

a. The owner, if the company is a sole proprietorship;

b. Each partner, if the company is a partnership; or

c. The qualifying agent, if the company is a corporation;

2. The name under which the company intends to do business;

3. The address of the principal place of business and any branch offices of the company within this state; and

4. Other information as the board may reasonably require by administrative regulation.

(b) If the company is a corporation, the following information is also required:

1. The correct legal name of the corporation;

2. The state and date of incorporation;

3. The date the corporation qualified to do business in this state;

4. The address of the corporate headquarters, if located outside of this state;

5. The names of two (2) principal corporate officers other than the qualifying agent, their business addresses, residence addresses, and the office held by each in the corporation; and

6. The identity and license number of all private investigators employed by or affiliated with the company.

(c) The application shall be subscribed and sworn to by:

1. The owner, if the applicant is a sole proprietorship;

2. Each partner, if the applicant is a partnership; or

3. The qualifying agent, if the applicant is a corporation.

(3) Each applicant for an individual license or owner, partner, or qualifying agent for a company license shall:

(a) Be at least twenty-one (21) years of age;

(b) Be a citizen of the United States or a resident alien;

(c) Have a high school education or its equivalent;

(d) Not receive a license until the earlier of:

1. The expiration of ten (10) years from the applicant's release from a sentence imposed by any state or territory of the United States or the federal government for the commission of a felony, including a sentence of confinement or time served on probation, parole, or other form of conditional release or discharge; or

2. The date the applicant received a restoration of the applicant's civil rights;

(e) Not have been convicted of a misdemeanor involving moral turpitude or for which dishonesty is a necessary element within the previous five (5) years;

(f) Not have been dishonorably discharged from any branch of the Armed Forces of the United States;

(g) Not have had his or her certification as a peace officer revoked in this or another state;

(h) Not have been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant to be competent;

(i) Not have been voluntarily or involuntarily committed to a facility or outpatient program for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within the three (3) year period immediately preceding the date on which the application is submitted;

(j) Not chronically and habitually use alcoholic beverages as evidenced by:

1. The applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) year period immediately preceding the date on which the application is submitted; or

2. The applicant having been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(k) Not chronically and habitually use alcoholic beverages or drugs to the extent that his or her normal faculties are impaired;

(l) Be of good moral character;

(m) Pass an examination administered by the board in accordance with KRS 329A.025(2(c); and

(n) Submit proof of coverage which meets the following requirements:

1. Is written by an insurance company which is lawfully engaged to provide insurance coverage in Kentucky;

2. Provides for a combined single-limit policy in the amount of at least two hundred fifty thousand dollars ($250,000); and

3. Insures for liability all of the applicant's employees while acting in the course of their employment.

Private investigators who limit their practice exclusively to working under the supervision ***and as employees*** of an attorney who is licensed to practice law in this state are exempted from the requirement of this paragraph.

(4) The board shall maintain the confidentiality of information relating to the licensee ***or applicant***, except that the board may provide this information to local, state, or federal law enforcement agencies.

(5) Upon inquiry by any individual or entity, the board or the board's administrative staff shall provide or confirm the license status of any private investigator or private investigating company.

Section 4. KRS 329A.040 is amended to read as follows:

(1) Upon receipt of a license application, accompanied by a nonrefundable, nonproratable fee of not less than one hundred dollars ($100) and not more than ***four***~~[five]~~ hundred dollars ***($400)***~~[($500)]~~, as established by the board by promulgation of administrative regulations, the board shall:

(a) Conduct an investigation to determine whether the statements made in the application are true; and

(b) Submit the application, including fingerprints as appropriate, to the Kentucky State Police and the Administrative Office of the Courts for a state criminal history background check. The Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for a national criminal history background check. The board may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. No. 92-544. The applicant for licensure shall bear the additional cost, in an amount not to exceed the actual cost, incurred for the criminal background check.

(2) Following the investigation process, the board shall either deny or approve the application.

(a) If the application for a license is denied, the board:

1. Shall notify the applicant in writing and set forth the grounds for denial. If the grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the correction; and

2. Shall grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

(b) If the application for a license is approved, the board shall issue:

1. A license to be posted conspicuously in the licensee's principal place of business; and

2. A wallet-sized laminated identification card to each individual licensee to be carried while engaged in private investigation. Information on the card shall include the expiration date of the license and the licensee's:

a. Name;

b. Photograph;

c. Physical characteristics; and

d. License number.

(3) A license or identification card issued under subsection (2) of this section is not assignable and is personal to the licensee.

(4) For purposes of this section and Section 3 of this Act, any company whose workforce is comprised of no more than one (1) private investigator shall only be required to have an individual private investigator's license. If at anytime the workforce of such a company increases, the company shall notify the board of the workforce increase and shall seek a company license in addition to the individual private investigator's license.

Section 5. KRS 329A.070 is amended to read as follows:

The provisions of KRS 329A.010 to 329A.090 do not apply to:

(1) An officer or employee of the United States, this state, another state, or any political subdivision thereof, performing his or her official duties within the course and scope of his or her employment;

(2) A public accountant, certified public accountant, or the bona fide employee of either, performing duties within the scope of public accountancy;

(3) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons;

(4) An attorney-at-law, or an attorney's bona fide employee, performing duties within the scope of the practice of law ***or authorized agent with duties limited to document and record retrieval or witness interviews***;

(5) An insurance company, licensed insurance agent, or staff or independent adjuster if authorized to do business in Kentucky, performing investigative duties limited to matters strictly pertaining to an insurance transaction;

(6) A person engaged in compiling genealogical information, or otherwise tracing lineage or ancestry, by primarily utilizing public records and historical information or databases;

(7) A private business employee conducting investigations relating to the company entity by which he or she is employed;

(8) An individual obtaining information or conducting investigations on his or her own behalf;~~[or]~~

(9) An employee of a private investigator or a private investigating firm who works under the direction of the private investigator or the private investigating firm for less than ***two hundred forty (240)***~~[three hundred fifty (350)]~~ hours per year. ***The board shall promulgate administrative regulations to establish a method of verification of the number of hours worked; or***

(10) A professional engineer, a professional land surveyor, or a professional engineer's or professional land surveyor's bona fide employee, performing duties within the scope of practice of engineering or land surveying.

Section 6. KRS 329A.080 is amended to read as follows:

Any person violating KRS 329A.015 shall be guilty of a Class A misdemeanor ***for the first offense and a Class D felony for a second or subsequent offense***.

SECTION 7. A NEW SECTION OF KRS CHAPTER 329A IS CREATED TO READ AS FOLLOWS:

(1) Any private investigator who conducts fire or arson investigations in the state of Kentucky shall be:

(a) Licensed in accordance with Section 2 of this Act; and

(b) Certified by the National Association of Fire Investigators or the International Association of Arson Investigators as a fire and explosion investigator.

(2) Upon revocation of his or her certification by either the National Association of Fire Investigators or the International Association of Arson Investigators, a private investigator who conducts fire or arson investigations shall cease the practice of fire or arson investigation.

(3) Fire or arson investigation by a licensee under this chapter shall be prohibited without certification.

Section 8. KRS 199.570 is amended to read as follows:

(1) ***(a)*** The files and records of the court during adoption proceedings shall not be open to inspection by persons other than parties to the proceedings, their attorneys, and representatives of the cabinet except under order of the court expressly permitting inspection.

(b) Upon the entry of the final order in the case, the clerk shall place all papers and records in the case in a suitable envelope which shall be sealed and shall not be open for inspection by any person except on written order of the court, except that upon the written consent of the biological parents and upon written order of the Circuit Court all papers and records including all files and records of the Circuit Court during proceedings for termination of parental rights provided in KRS 625.108 shall be open for inspection to any adult adopted person who applies in person or in writing to the Circuit Court as provided in KRS 199.572. ***Health information received pursuant to KRS 199.525 shall be added to the adoption case file. The clerk of the Circuit Court shall set up a separate docket and order book for adoption cases and these files and records shall be kept locked.***

(c) No person having charge of any adoption records shall disclose the names of any parties appearing in such records or furnish any copy of any such records ***to any person or other entity that does not meet the requirements of Section 9 of this Act***, except upon order of the court which entered the judgment of adoption.~~[Health information received pursuant to KRS 199.525 shall be added to the adoption case file. The clerk of the Circuit Court shall set up a separate docket and order book for adoption cases and these files and records shall be kept locked.]~~

(2) After entry of the adoption judgment, the clerk of the Circuit Court shall promptly report to the Cabinet for Health Services of Kentucky full information as called for on forms furnished by the Cabinet for Health Services, necessary to make a new birth certificate conforming to the standard birth certificate form. Upon receipt of this information, the Cabinet for Health Services shall cause to be made a new record of the birth and it shall be filed with the original certificate, and the original certificate shall be stamped with the words, "CONFIDENTIAL -- subject to copy and/or inspection only on written order of the court."

(3) The new certificate shall set forth the new name, if any, of the adopted child, the names of the adoptive parents, and such other information deemed necessary in accordance with rules and regulations promulgated by the Cabinet for Health Services in issuing of birth certificates. If the adopted child is under eighteen (18) years of age, the birth certificate shall not contain any information revealing the child is adopted and shall show the adoptive parent or parents as the biological parent or parents of the child. If requested by the adoptive parents,

the new birth certificate when issued shall contain the location of birth, hospital, and name of doctor or midwife. This information should be given only by an order of the court in which the child was adopted. The new birth certificate shall recite the residence of the adoptive parents as the birthplace of the child and this shall be deemed for all legal purposes to be the birthplace of the child. If no birth certificate is on file for a child born in Kentucky, the Cabinet for Health Services shall prepare a certificate of birth in accordance with the information furnished the cabinet by the clerk of the Circuit Court which issued the adoption order. The Cabinet for Health Services shall furnish to the clerks of the Circuit Courts the necessary forms to carry out the provisions of this section. If the child was born in another state, the order of adoption shall be forwarded to the division of vital statistics of the state concerned to be changed in accordance with the laws of such state. If the child was born in a foreign country, the report of adoption shall be returned to the attorney or agency handling the adoption for submission to the appropriate federal agency.

(4) Thereafter when any copy of the certificate of birth of any child is issued it shall be a copy of the new certificate of birth, except when an order of the court granting the judgment of adoption shall request the issuance of the copy of the original certificate of the child's birth.

(5) If any judgment of adoption is reversed, modified, or vacated in any particular, the clerk of the Circuit Court shall notify the Cabinet for Health Services of the reversal or modification and the effect of same, and the cabinet shall make any necessary changes in its records.

Section 9. KRS 199.572 is amended to read as follows:

(1) At the time the biological parents give up the child for adoption, they shall be asked by the cabinet whether they consent to the inspection of the adoption records, to personal contact by the child, or to both when he becomes an adult. If consent is then given, it can later be revoked. If consent is withheld at that time, the biological parents may give consent at any later time. The initial written statement of consent or refusal of consent to inspection of records and personal contact shall be filed with the Circuit Court not later than the date of finalization of the adoption proceedings. When a written consent is on file, the records shall be available to the adult adopted person, upon his request therefor in writing.

(2) When any adult adopted person applies in person or in writing to the Circuit Court for authorization to inspect all papers and records pertaining to the adoption proceedings of that adult adopted person as provided in KRS 199.570(1), and the biological parents have previously refused consent to inspection of records and to personal contact, the court may, if satisfied as to the identity of the adult adopted person, authorize the adult adopted person to inspect the papers and records if written consent is obtained from the biological parents identified on the adult adopted person's original birth certificate.

(3) The Circuit Court shall, within seven (7) working days of the receipt of the request, direct the secretary of the cabinet to notify each biological parent identified on the adult adopted person's original birth certificate that the person has applied to the court for information identifying the biological parent. Within six (6) months of receiving the notice of the request of the adult adopted person, the secretary of the cabinet shall make complete and reasonable efforts to notify each biological parent identified on the adult adopted person's original birth certificate. The secretary may charge a reasonable fee not to exceed two hundred fifty dollars ($250) to the adult adopted person for making this search. Every child-caring facility and child-placing agency in the Commonwealth shall cooperate with the secretary in his efforts to notify these biological parents.

(4) ***If the cabinet utilizes the services of another person or entity to perform a search under subsection (3) of this section, the cabinet shall enter into a formal contract with that person or entity. A person or entity contracted to perform a search shall be licensed under the provisions of KRS Chapter 329A.***

(5) The notification of the biological parents shall not be by mail and shall be by personal and confidential contact ***by the cabinet***. The notification shall be done without disclosing the identity of the adult adopted person. The personal and confidential contact with the biological parents shall be evidenced by filing with the Circuit Court an affidavit of notification executed by the person who notified each parent and certifying each parent was given the following information:

(a) The nature of the information requested by the adult adopted person;

(b) The date of the request of the adult adopted person;

(c) The right of the biological parent to file, within sixty (60) days of receipt of the notice, an affidavit with the Circuit Court stating that the adult adopted person shall be authorized to inspect all papers and records pertaining to his adoption proceedings;

(d) The right of the biological parent to file at any time an affidavit authorizing the adult adopted person to inspect all papers and records pertaining to his adoption proceedings; and

(e) The right of a biological parent to file an affidavit with the Circuit Court stating that all papers and records pertaining to the adoption proceedings of the adult adopted person shall not be open for inspection by the adult adopted person.

(6) ~~[(5)]~~ The adult adopted person shall not be authorized to inspect the papers and records pertaining to his or her adoption proceedings unless those biological parents identified on the original birth certificate agree in writing to that inspection.

(7) ~~[(6)]~~ If after diligent and reasonable effort, the secretary of the cabinet certifies that both biological parents identified in the original birth certificate are deceased or the secretary is unable to locate said parents, then a judge of the Circuit Court, upon motion of the adult adopted person, may order that all papers and records of the Cabinet for Families and Children and those of the Circuit Court pertaining to the adoption shall be open for inspection to the adult adopted person. In any case, the court shall order that only identifying information about the biological parents be shared with the adult adopted person.

Section 10. KRS 199.990 is amended to read as follows:

(1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars ($500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.

(2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570***, 199.572,*** and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

(3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned for not more than thirty (30) days, or both.

(4) Any violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars ($1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with KRS 164.518. The balance of the fund shall not lapse to the general fund at the end of each biennium.

(5) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 shall be fined not less than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(6) Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

Section 11. (1) Notwithstanding KRS 7.123 to the contrary, any private investigating firm that has had its headquarters in the Commonwealth of Kentucky for at least two (2) years prior to July 15, 2002, shall receive a license issued under KRS Chapter 329A automatically upon filing the appropriate application and paying the appropriate fee to the board within sixty (60) days after the effective date of this Act.

(2) Notwithstanding KRS 7.123 to the contrary, any person actively engaged in full-time or part-time investigator work in this state as a private investigator or as an investigator for a law enforcement agency for a continuous period of at least two (2) years prior to July 15, 2002, shall receive a license as a private investigator issued under KRS Chapter 329A automatically upon:

(a) Filing an application with the board within sixty (60) days after the effective date of this Act, including supporting documentation; and

(b) Paying the licensure fee.

Section 12. Any person licensed in accordance with Section 2 of this Act shall have his or her renewal fee under KRS 329A.045 decreased in an amount that reflects the difference between the initial fee paid to the board and the fee established in Section 4 of this Act, if the initial fee paid by the licensee was in excess of the fee established in Section 4 of this Act. This decrease in the renewal fee shall be limited to the first renewal of such a licensee made after the effective date of this Act.

Section 13. Whereas it is necessary for the board to begin operating under these provisions as soon as possible in order to effectively regulate the private investigator industry, an emergency is declared to exist, and Sections 1 to 7, 11, and 12 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 22, 2004

CHAPTER 187

(SB 95)

AN ACT relating to zoning.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

No city, county, urban-county government, charter county, or consolidated local government shall utilize the zoning process to prohibit a federally licensed firearms manufacturer, importer, or dealer from locating at any place within the jurisdiction at which any other business may locate. This section shall not prohibit local jurisdictions from subjecting the businesses of federally licensed firearms manufacturers, importers, and dealers to the same restrictions related to the exterior appearance of the property and number of paid employees applied to other commercial uses in residential zones. No restrictions shall be enacted that could be reasonably construed to solely affect federally licensed firearms manufacturers, importers, or dealers.

Approved April 22, 2004

CHAPTER 188

(SB 111)

AN ACT relating to school councils.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

(1) (a) A school with a school council identified as needing improvement under Section 2 of this Act shall include in its school improvement plan actions to strengthen the school council and the school-based decision making process at the school.

(b) The local school district shall include in its assistance plan for a school identified in paragraph (a) of this subsection actions to strengthen the functioning of the school council and the school-based decision making process at the school.

(2) (a) A scholastic audit team, established under Section 2 of this Act, auditing a school a second time that for two (2) or more successive accountability cycles failed to meet its goal, shall include in the review:

1. The functioning of the school and the school council;

2. The implementation of the school improvement plan and actions related to the school council developed under subsection (1)(a) of this section;

3. The interaction and relationship between the superintendent, central office personnel, and the council; and

4. A recommendation to the commissioner of education in the audit report concerning whether the school council should retain the authority granted to it under Section 4 of this Act. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:

a. The authority should be transferred to the superintendent or a highly skilled educator; and

b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (6) of this section.

(b) A scholastic audit team, established under Section 2 of this Act, auditing a district of a school subject to subsection (2)(a) of this section, shall include in its review:

1. The overall functioning of the school district;

2. The interaction and relationship between the superintendent, central office personnel, school board members, and the council; and

3. The implementation of the district assistance plan for the audited school. In the audit report, the team shall make a recommendation to the commissioner of education concerning whether the school's council should retain its authority granted under Section 4 of this Act. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:

a. The authority should be transferred to the superintendent or a highly skilled educator; and

b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (6) of this section.

(3) (a) 1. If both the school and the district audit teams recommend transfer of the council's authority to the superintendent, the commissioner of education shall transfer the council's authority under Section 4 of this Act to the superintendent. The commissioner shall determine whether the school council shall continue in an advisory capacity and shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the action.

2. Within thirty (30) days of the commissioner's action, the school council may request that the Kentucky Board of Education consider the matter by submitting a written request including any supporting information. The Kentucky Board of Education shall consider the audit reports, the commissioner's decision, and the request for consideration with any supporting information, and make a final determination.

(b) If both audit teams recommend transfer of the council's authority to a highly skilled educator or if both recommend transfer of the council's authority but are not in agreement as to the party to be granted authority, the commissioner shall make a recommendation to the Kentucky Board of Education, which shall make the final determination. The school council and the superintendent may submit supporting information. The commissioner shall include as part of the recommendation whether the school council shall continue in an advisory capacity. The Kentucky Board of Education shall consider the audit reports, the commissioner's recommendation, and supporting information provided by the school council and superintendent. The commissioner shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the recommendation and the Kentucky Board of Education's final action.

(c) If the two (2) audit teams disagree in their recommendations about whether the council's authority should be transferred, the school council shall retain its authority.

(4) Subject to the policies adopted for the district by the local board of education, the local district superintendent or the highly skilled educator shall assume all powers, duties, and authority granted to a school council under Section 4 of this Act thirty (30) days following the commissioner's recommendation if no request for consideration by the Kentucky Board of Education is submitted or following the final determination of the Kentucky Board of Education, whichever is appropriate.

(5) Within thirty (30) days after assuming the powers, duties, and authority under subsection (4) of this section, the superintendent or highly skilled educator shall consult with the council, if the council has been given an advisory role under subsection (3) of this section, and with stakeholders at the school including parents, the principal, certified staff, and classified staff, and prepare a plan for developing capacity for sound school-based decision making at the school. The commissioner of education shall review the plan and approve it or identify specific areas for improvement. The superintendent or highly skilled educator shall report to the commissioner every six (6) months on the implementation and results of the approved plan.

(6) The school's right to establish a council or the school's right for the council to assume the full authority granted under Section 4 of this Act shall be restored when the school meets its goal for an accountability cycle as determined by the Kentucky Department of Education under Section 2 of this Act.

(7) If, in the course of a school or district scholastic audit, the audit team identifies information suggesting that a violation of subsection (9)(a) of Section 4 of this Act may have occurred, the commissioner of education shall forward the evidence to the Office of Education Accountability for investigation.

Section 2. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.

(b) Effective July 1, 2006, the Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%).

(2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

(a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;

(b) School improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff under KRS 158.782;

(e) Evaluation of school personnel; and

(f) Student transfer to successful schools.

(4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and

Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:

1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;

2. Reviewing a school's learning environment, efficiency, and academic performance of students and the quality of the school council's data analysis and planning in accordance with KRS 160.345(2)(j);

3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and

4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.

(b) ***The scholastic audit team shall consider the functioning of the school council in its review and make recommendations for improvement of the school council, if needed, and concerning the authority of the school council if required under Section 1 of this Act.***

(c) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal and report to the public on the resulting findings regarding each aspect of the schools' operations required under subparagraph 2. of paragraph (a) of this subsection.

(5)~~[(a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.~~

~~(b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).~~

~~2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.~~

~~(6)]~~ After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.

(6)~~[(7)]~~ After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the

performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

Section 3. KRS 158.782 is amended to read as follows:

(1) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to set forth the guidelines for providing highly skilled education assistance to schools and school districts. The program shall be designed to support improved teaching and learning and may include, but not be limited to, establishing the following:

(a) Criteria for identifying successful strategies of assistance;

(b) Policies and procedures for providing education assistance, which may include training, making assignments, employing certified personnel, and setting salaries that may include supplements; and

(c) Duties of those providing education assistance, which may include personnel evaluation and recommendations concerning retention, dismissal, or transfer of personnel.

(2) A district employee selected to provide assistance shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. A certified employee shall not lose any employee benefits as a result of a special assignment.

(3) ***The Department of Education shall provide appropriate training for the persons selected to provide assistance that shall include but not be limited to training to strengthen the school-based decision making process.***

(4) The Kentucky Board of Education shall annually review the paperwork required of schools receiving highly skilled certified education assistance. It shall assure that paperwork requirements are kept to a minimum, relevant to the needs of the school, and are directly related to improving teaching and learning.

Section 4. KRS 160.345 is amended to read as follows:

(1) For the purpose of this section:

(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;

(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;

2. Instructional programs operated in institutions or schools outside of the district; or

3. Alternative schools designed to provide services to at-risk populations with unique needs;

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers; and

(d) "Parent" means:

1. A parent, stepparent, or foster parent of a student; or

2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in

KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;

(b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;

(c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;

(f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;

(g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available;

(i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;

2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;

4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;

5. Determination of use of school space during the school day;

6. Planning and resolution of issues regarding instructional practices;

7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;

8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;

9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and

10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and

(j) Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the

review required by this paragraph no later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

(d) Professional development plans developed pursuant to KRS 156.095;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. Experienced members may participate in the training for new members to fulfill their training requirement. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

(10) Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to a school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under Section 1 of this Act.

Approved April 22, 2004

CHAPTER 189

(SB 133)

AN ACT relating to animals.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 258 IS CREATED TO READ AS FOLLOWS:

Gunshot shall not be used as a routine method of euthanasia in animal shelter settings. This prohibition shall not apply in animal shelter settings if an animal presents a threat to the health or safety of anyone lawfully on the premises of the shelter. The prohibition against gunshot shall also not apply to peace officers or animal control officers outside animal shelter situations if an animal:

(1) Cannot be seized;

(2) Presents a threat to the health or safety of the general public; or

(3) Has an injury or physical condition which causes the animal to suffer.

Section 2. KRS 258.005 is amended to read as follows:

As used in KRS 258.005 to ***258.087***~~[258.085 and subsections (1) and (2) of KRS 258.990]~~, unless the context requires otherwise:

(1) "Dog" means any ***canine three (3) months of age or older for which there exists a United States Department of Agriculture approved rabies vaccine***~~[member of the canine family]~~;

(2) "Owner~~[,]~~" ***means any person owning, keeping, or harboring a dog, cat, or ferret in Kentucky***~~[when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog or has it in his care, or permits it to remain on or about premises owned or occupied by him]~~;

(3) "Veterinarian" means a licensed practitioner of veterinary medicine;

(4) "Qualified person" means a person granted a permit by the secretary for health services to vaccinate ***his own dog***~~[animals]~~ against rabies~~[and may include owners or operators of licensed kennels];[and]~~

(5) "Vaccination" means the ***administration***~~[injection]~~ by a veterinarian or other qualified person of ***rabies*** vaccine approved by~~[,]~~ and administered in accordance with ***administrative***~~[the]~~ regulations ***promulgated by***~~[of]~~ the secretary for health services***;***

(6) "Cat " means any feline three (3) months of age or older for which there exists a United States Department of Agriculture approved rabies vaccine;

(7) "Animal control officer" means an individual who is employed or appointed by, or has contracted with:

(a) A city, county, urban-county, charter county, or consolidated local government to enforce the provisions of this chapter, the provisions of the Kentucky Revised Statutes relating to cruelty, mistreatment, or torture of animals, and local animal control ordinances; or

(b) An entity that has contracted with a city, county, urban-county, charter county, or consolidated local government to enforce the provisions of this chapter, the provisions of the Kentucky Revised Statutes relating to cruelty, mistreatment, or torture of animals, and local animal control ordinances;

(8) "Ferret" means any musteline three (3) months of age or older for which there exists a United States Department of Agriculture approved rabies vaccine; and

(9) "Quarantine" means the confinement of an animal for observation of clinical signs of illness indicating rabies infection, and the prevention of escape or contact with any person or other animal.

Section 3. KRS 258.015 is amended to read as follows:

(1) Every owner shall have his dog***, cat, or ferret*** initially vaccinated ***against rabies*** by the age of four (4) months and revaccinated~~[against rabies]~~ at the expiration of the immunization period as certified by the veterinarian. The veterinarian~~[or qualified person]~~ who vaccinates a dog***, cat, or ferret*** shall issue to the owner~~[thereof]~~ a vaccination certificate on a form ***approved***~~[prescribed and supplied]~~ by the Cabinet for Health Services. The vaccination certificate shall be prepared and issued in ***duplicate***~~[triplicate]~~, one (1) copy to be retained by the issuing veterinarian ***and***~~[or other qualified person,]~~ one (1) copy to be given to the owner of the dog***, cat, or ferret*** vaccinated~~[, and one (1) copy to be forwarded by the veterinarian or qualified person to the local health department, or, if none is maintained, to the Department for Public Health]~~. Each certificate shall bear the name and address of the veterinarian~~[or qualified person]~~ who issued it. The veterinarian~~[or qualified person]~~ shall also furnish each ***dog*** owner with a ***rabies***~~[metal]~~ tag bearing a serial number ***corresponding to the vaccination certificate with***~~[and after January 1, 1980,]~~ the year of~~[expiration of the]~~ immunization~~[period]~~. The tag~~[may bear the name of the veterinarian or qualified person issuing it. It shall be affixed by the owner to a collar or harness furnished by him and]~~ shall be ***affixed to a collar or harness furnished by the owner and shall be*** worn by the dog for which the ***tag***~~[certificate]~~ was issued. No one except the owner or his duly authorized agent shall remove the ***tag***~~[collar with the attached tag from the dog. Prior to their initial officially recorded vaccination against rabies, all dogs shall be confined to the premises of the owner]~~.

(2) Every qualified person who vaccinates his own dog shall comply with the vaccination certificate and tag requirement provisions of subsection (1) of this section.

(3) Every owner of a cat or ferret shall show proof of a valid rabies vaccination upon request of an animal control officer or peace officer.

(4) Any person with feral cats on his premises shall make a reasonable effort to capture or vaccinate the cats.

Section 4. KRS 258.035 is amended to read as follows:

Any owner who has had his dog***, cat, or ferret*** vaccinated against rabies in another state by the proper authority~~[therein]~~ shall not be required to have ***the***~~[such]~~ dog***, cat, or ferret*** revaccinated when brought into this state provided the requirements of ***the***~~[such]~~ state under which the vaccination was made were of a standard not lower than those required in this state**,** and provided further that ***the***~~[such]~~ dog wears a tag affixed to ***its***~~[his]~~ collar or harness bearing the ***year***~~[date]~~ of ***the***~~[such]~~ vaccination ***and the owner of the cat or ferret shows proof of a valid rabies vaccination***. One (1) year after the date of ***the***~~[such]~~ vaccination ***the***~~[such]~~ dog***, cat, or ferret shall***~~[must]~~ be revaccinated unless provided otherwise by ***administrative***~~[the rules and]~~ regulations ***promulgated by***~~[of]~~ the secretary for health services. The secretary for health services may ***promulgate administrative***~~[make rules and]~~ regulations governing the matter of reciprocity with other states.

Section 5. KRS 258.043 is amended to read as follows:

(1) ~~[Whenever a local board of health determines or is notified by the Cabinet for Health Services that the rabies immunization level among dogs is low in the county or any portion thereof, the]~~A local health department ***may***~~[shall]~~ sponsor mass ***rabies*** immunization clinics ***and***~~[at strategic locations and intervals throughout the area designated. The local health department]~~ shall contract with local veterinarians to administer the ***rabies*** vaccine. If the services of veterinarians are not available in the area, the local health department may contract with other veterinarians~~[or qualified persons designated by the Cabinet for Health Services]~~. A reasonable fee ***to be charged to the owner of each dog, cat, or ferret shall be determined by the local health department***, not to exceed five dollars ($5),~~[designated by the local board of health may be collected from each owner]~~ to help defray the cost of the clinic~~[program]~~.

(2)~~[Vaccination and licensing procedures may be jointly conducted at the clinics.~~

~~(3)]~~ No owner shall be required to have his dog***, cat, or ferret*** vaccinated at a public clinic if he elects to have his dog***, cat, or ferret*** vaccinated privately by a veterinarian of his choice.

(3) No owner shall be required to have his dog vaccinated at a public clinic if he is a qualified person and elects to vaccinate his dog himself.

Section 6. KRS 258.055 is amended to read as follows:

If~~[Whenever]~~ a local board of health has reason to believe or has been notified by the Cabinet for Health Services that there is danger that rabies may spread within the county~~[or any portion thereof]~~, the board shall publish a notice requiring owners of~~[dogs or other]~~ specified animals in the ***affected*** area ***of the county***~~[designated]~~ to confine the animals for ***any***~~[such]~~ periods ***that***~~[as]~~ may be necessary to prevent the spread of rabies. If it is deemed advisable in the interest of public health, the local board of health shall order all ***specified animals***~~[dogs]~~ in the ***affected*** area ***to be vaccinated***~~[revaccinated]~~ against rabies, ***except animals that have been vaccinated within the past six (6) months under the provisions of KRS 258.005 to 258.087.***~~[and]~~ If the local board fails or neglects to ***order a vaccination***~~[do so]~~, the Cabinet for Health Services ***shall do so***~~[may order the revaccination of all dogs or other animals in the area except animals that have been previously vaccinated within the past six (6) months under the provisions of KRS 258.005 to 258.085]~~. The Cabinet for Health Services may aid the local health department in the execution of ***any***~~[such]~~ emergency vaccinations.

Section 7. KRS 258.065 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, every physician shall, within twelve (12) hours after his first professional attendance of a person bitten by a dog, cat, ***ferret,*** or other animal**,** report to the local health department the name, age, sex,~~[color,]~~ and precise location of the person so bitten. If a child is bitten and no physician attends, the report shall be made by his parents or guardian. If an adult is bitten and no physician attends, he or the person caring for him shall make the report.

(2) If the local health department is closed when a physician, parent, guardian, or other adult attends to a bitten person, the physician, parent, guardian, or other adult shall report the incident on the next working day of the health department.

Section 8. KRS 258.075 is amended to read as follows:

The secretary for health services may administer the provisions of KRS 258.005 to ***258.087***~~[258.085 and subsections (1) and (2) of KRS 258.990]~~ through the local health departments and may ***promulgate any administrative***~~[make such rules and]~~ regulations and employ such personnel as are necessary to effectuate the purposes of KRS 258.005 to ***258.087***~~[258.085 and subsections (1) and (2) of KRS 258.990]~~.

Section 9. KRS 258.085 is amended to read as follows:

(1) ***(a)*** A health officer or his agent shall have the authority to quarantine for a period not to exceed one hundred eighty (180) days any animal bitten by another animal known or suspected to have rabies, and to quarantine for a period not to exceed ten (10) days any ***dog, cat, or ferret***~~[animal]~~ which has bitten a human being or which exhibits symptoms of rabies.~~[An animal so quarantined may be confined by the health officer at a designated place at the owner's expense.]~~

(b) In lieu of the quarantines provided in paragraph (a) of this subsection, a health officer or his agent may order an animal to be destroyed and tested for rabies.

(c) If a wild or exotic animal bites a human being or exhibits symptoms of rabies, that animal shall be destroyed and tested for rabies.

(2) ***If an animal***~~[Whenever a dog]~~ dies with rabies***,***~~[or]~~ is suspected of having died with rabies***,*** or is destroyed because of having been suspected of being rabid, the owner***, if known***~~[thereof]~~, whether the ***animal***~~[dog]~~ had been previously quarantined or not, shall~~[at his own expense]~~ send the head of ***the animal***~~[such dog]~~ to a laboratory approved by the secretary for health services ***to be tested for rabies***~~[in the manner prescribed by the rules and regulations of the secretary for health services]~~.

(3) ***(a) The owner of any animal quarantined or tested under this section shall be liable for any expenses incurred as a result of the quarantine or testing.***

(b) Any owner who destroys or disposes of an animal that has bitten a human being shall be liable for any rabies postexposure treatment if the animal is destroyed or disposed of in a manner that does not allow for rabies testing or quarantine.

Section 10. KRS 258.087 is amended to read as follows:

Any city***, county, urban-county, charter county, or consolidated local government***~~[legislative body or fiscal court]~~ may, by the adoption of an appropriate ordinance or resolution, provide for more stringent regulation of rabies control in dogs, cats, ***ferrets,*** and other animals than set forth in ***KRS 258.005 to 258.087***~~[this chapter]~~.

Section 11. KRS 258.095 is amended to read as follows:

As used in KRS 258.095 to ***258.500***~~[258.365 and KRS 258.990(3) and (4)]~~, unless the context requires otherwise:

(1) "Department" means the Department of Agriculture;

(2) "Commissioner" means the Commissioner of Agriculture;

(3) ***"Board" means the Animal Control Advisory Board created by Section 12 of this Act***~~["Committee" means the advisory committee created by KRS 258.115]~~;

(4) "Dog" means any ***domestic***~~[member of the]~~ canine~~[family]~~, six (6) months of age or ***older***~~[over]~~;

(5) "Owner," when applied to the proprietorship of a dog, includes every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or permits it to remain on or about premises owned or occupied by him;

(6)~~["Livestock" includes horses, stallions, colts, geldings, mares, sheep, rams, lambs, bulls, bullocks, steers, heifers, cows, calves, mules, jacks, jennets, burros, goats, kids, swine, and confined and domesticated hares and rabbits;~~

~~(7) "Poultry" includes all domesticated fowl and all game birds which are legally kept in captivity;~~

~~(8) "Kennel" means any establishment where dogs are kept for the purpose of breeding, sale, show or sporting purposes, and which is so constructed that dogs cannot stray therefrom;~~

~~(9) "Livestock fund" means the fund created by KRS 258.125 for the purpose of administering its provisions;~~

~~(10)~~] "Attack" means a dog's attempt to bite or successful bite of a human being. This definition shall not apply to a dog's attack of a person who has illegally entered or is trespassing on the dog owner's property in violation of KRS 511.060, 511.070, 511.080, or 511.090;

(7)[~~(11)~~] "Vicious dog" means any individual dog declared by a court to be a vicious dog;

(8) "Animal control officer" means an individual who is employed or appointed by, or has contracted with:

(a) A city, county, urban-county, charter county, or consolidated local government to enforce the provisions of this chapter, the provisions of the Kentucky Revised Statutes relating to cruelty, mistreatment, or torture of animals, and local animal control ordinances; or

(b) An entity that has contracted with a city, county, urban-county, charter county, or consolidated local government to enforce the provisions of this chapter, the provisions of the Kentucky Revised Statutes relating to cruelty, mistreatment, or torture of animals, and local animal control ordinances;[~~(12) "Animal control officer" means an individual employed by a city, county, urban-county government, or charter county government who enforces the provisions of this chapter and local dog control ordinances; and~~]

(9)[~~(13)~~] "Designated license facility" means any person, facility, or business designated by resolution of the ***governing body of the county***[~~fiscal court~~] to collect license fees under KRS 258.135***;***

(10) "Cat" means any domestic feline three (3) months of age or older;

(11) "Ferret" means any domestic musteline three (3) months of age or older;

(12) "Euthanasia" means the act of putting an animal to death in a humane manner by methods specified as acceptable for that species by the most recent report of the American Veterinary Medical Association Panel on Euthanasia, subject to the requirements provided by Section 1 of this Act;

(13) "Animal shelter" means any facility used to house or contain animals, operated or maintained by a governmental body, an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization;

(14) "Quarantine" means the confinement of an animal for observation of clinical signs of illness indicating rabies infection, and the prevention of escape or contact with any person or other animal;

(15) "Livestock" means poultry; ratites; and cervine, bovine, ovine, porcine, caprine, or equine animals that are privately owned and raised in a confined area for breeding stock, food, fiber, or other products; and

(16) "Poultry" means chickens, ducks, turkeys, or other domestic fowl.

Section 12. KRS 258.117 is amended to read as follows:

(1) The Animal Control Advisory Board is hereby created for the purposes of[~~ making recommendations to the commissioner relating to~~] evaluating applications for and reviewing disbursements from the animal control and care fund,[~~ establishing shelter standards,~~] creating training programs, and other duties relating to animal control and care in the counties of the Commonwealth. ***The Animal Control Advisory Board shall promulgate administrative regulations to carry out the provisions of this section.***

(2) The advisory board shall be attached to the Kentucky Department of Agriculture for administrative purposes.

(3) The advisory board shall be composed of the following members appointed by the Governor as specified:

(a) Two (2) members selected from a list of three (3) submitted by the Kentucky Animal Control Association;

(b) Two (2) members selected from a list of three (3) submitted by the Kentucky Veterinary Medical Association;

(c) Two (2) members selected from a list of three (3) submitted by the Kentucky Farm Bureau;

(d) Two (2) members selected from a list of three (3) submitted by the Kentucky Association of Counties;

(e) Two (2) members selected from a list of three (3) submitted by the Kentucky Houndsmen Association; and

(f) Two (2) members selected from a list of three (3) submitted by the Kentucky League of Cities.

(4) Appointed members shall serve for a term of four (4) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(5) Members of the advisory board shall receive one hundred dollars ($100) per day for attendance at meetings and shall be entitled to reimbursement for expenses incurred for travel. No per diem or travel expenses shall be paid except for meetings of the full advisory board.

(6) The advisory board shall elect one (1) of its members to serve as chair for a term of two (2) years.

(7) The advisory board shall meet quarterly ***or upon the call of the chair***.

~~[(8) The commissioner shall carry out the recommendations of the advisory board.]~~

Section 13. KRS 258.119 is amended to read as follows:

(1) The "Animal Control and Care Fund" is hereby created as a special fund in the State Treasury. The fund may also receive gifts, grants from public and private sources, state appropriations, and federal funds. Any unalloted or unencumbered balances in this fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in this fund shall be continuously appropriated only for the purposes specified in this section.

(2) Moneys from the fund shall be used by the Animal Control Advisory Board for board expenses, for the creation and support of statewide programs related to animal control and care, and for training~~[dog wardens and]~~ animal control officers. "Statewide programs" includes, but is not limited to, the reimbursement of costs for preexposure rabies vaccinations for all animal control and care workers. When determining the distribution of the moneys relating to training, the need of the applicant shall be one (1) of the criteria considered by the board. Based on recommendations of the Animal Control Advisory Board, any moneys not expended under this subsection may be distributed annually as grants to counties with an established animal control and care program meeting the requirements of subsection (3) of this section or approved plan to establish an animal control and care program under subsection (4) of this section.

(3) As used in this section, "animal control and care program" means a program in which the county:

(a) Employs***, appoints, or contracts with***~~[a dog warden or]~~ an animal control officer***, or contracts with an entity that employs, appoints, or contracts with an animal control officer,*** as required by KRS 258.195, who is a high school graduate and has completed the training requirements set forth by the Animal Control Advisory Board; and

(b) Maintains ***an***~~[a dog pound or]~~ animal shelter, ***enters into an intergovernmental agreement for the establishment of a regional animal shelter,*** or contracts with an ***entity authorized to maintain sheltering and animal control services***~~[adjoining county]~~, to provide services that:

1. Segregate male and female animals ***by species*** in runs and holding areas;

2. Provide separate runs or holding areas for ill or injured animals***. An ill or injured animal shall be treated with proper veterinary care or euthanized***;

3. Provide quarantine for dogs and cats presented to the shelter when quarantine by the owner is not feasible or desirable, the cost of quarantine to be borne by the animal owner at the shelter's regular housing costs and fees. Quarantined dogs and cats shall be held in isolation for observation of symptoms of rabies for a period of ten (10) days from the date the dog or cat bit~~[or scratched]~~ a person. If the dog or cat dies or is euthanized while in quarantine, it shall be submitted to the local health department for testing for the presence of the rabies virus. The cost of the testing shall be borne by the animal owner or the local health department may bear the cost at its discretion;

4. Provide holding areas with protection from the weather, including heated quarters during cold weather***. Holding areas shall be free of debris or standing water, shall provide adequate lighting, ventilation, and sanitary conditions to promote a safe, healthy environment, and shall provide adequate space to allow for normal movement, including standing to full height, sitting, turning, and lying down in a natural position without coming in contact with the top or sides of the enclosure or another animal***;

5. Provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material~~[or a minimum of three (3) inches of gravel]~~;

6. Provide access to the public for no less than twenty-four (24) hours in one (1) week, with the hours that the facility is open to the public posted in a visible location;

7. Employ euthanasia methods ***specified as acceptable for that species***~~[recommended]~~ by the ***most recent report of the*** American Veterinary Medical Association ***Panel on Euthanasia***;~~[and]~~

8. Provide ***potable, uncontaminated water to every animal at all times, and palatable, uncontaminated food daily; and***

9. Maintain a record on each animal impounded. Records shall be maintained for a period of two (2) years and shall include:

a. Date impounded;

b. Location found or picked up;

c. Sex of animal and spay or neuter status, if known;

d. Breed or description, and color; and

e. Date reclaimed, adopted, or euthanized~~[other minimum standards as developed by the Animal Control Advisory Board and approved by the commissioner]~~.

(4) Counties submitting plans proposing to establish an animal control and care program for approval by the Animal Control Advisory Board shall comply with the requirements of:

(a) Paragraph (a) of subsection (3) of this section within twelve (12) months of the date the documentation is submitted; and

(b) Paragraph (b) of subsection (3) of this section within twenty-four (24) months of the date the documentation is submitted.

(5) To be eligible for any moneys distributed as grants to counties under subsection (2) of this section, counties shall submit an application to the commissioner, on a form prescribed by the Department of Agriculture, by July 15 of each year. Moneys shall be used for construction, equipment, educational supplies, and other uses or programs approved by the advisory board, but shall not be used to increase wages of ***animal control officers***~~[dog wardens]~~ or other personnel. Counties receiving money from the Department of Agriculture shall comply with the terms of the plan or program. If the terms of the plan or program are not complied with, the county shall refund the money to the Department of Agriculture.

~~[(6) The commissioner shall promulgate administrative regulations that relate to the animal control and care fund provisions of this section.]~~

Section 14. KRS 258.135 is amended to read as follows:

(1) ***The governing body of each county may establish an animal licensing program by ordinance. It shall be the responsibility of each county to administer and enforce its licensing program***~~[On or before July 1, 1954, and on or before July 1 of each year thereafter, the owner of any dog six (6) months old or over shall apply to the dog warden or designated license facility of the county in which he resides for a license for each dog owned or kept by him. The application shall be accompanied by a license fee of one dollar and fifty cents ($1.50) for each dog, except as provided in KRS 258.500. Any license issued for the year of 1954 before July 1, 1954, shall be effective until July 1, 1955. Dog wardens and designated license facilities shall be agents of the Commonwealth in the collection of the license fees, unless the department determines, with the approval of the Governor, to issue all licenses either directly or through other agents. For services rendered in collecting and paying over the fee, dog wardens or designated license facilities shall be allowed to retain the sum of twenty-five cents ($0.25) for each license. The balance of the license fee collected shall be paid to the department quarterly and shall be credited to the livestock fund. If the committee finds it to be in the interest of maximum enforcement of this chapter to permit certain other portions of the license fee to be retained by the respective counties for use in enforcement, the department may allow these portions of the license fee to be so retained by the counties]~~.

(2) ***In addition to the licensing program provided in subsection (1) of this section,*** any ***city***~~[county]~~ may ***establish an animal licensing program by ordinance. It shall be the responsibility of the city to administer***

and enforce its licensing program~~[choose to issue additional licenses in conjunction with effective dates of a valid rabies vaccination, provided the dog shall be licensed each fiscal year]~~.

Section 15. KRS 258.195 is amended to read as follows:

(1) ***The governing body***~~[On or before July 1, 1954, the fiscal court]~~ of each county shall employ***, appoint, or contract with an animal control officer, or shall contract with an entity that employs, appoints, or contracts with an animal control officer, and***~~[a dog warden. On or before July 1, 1955, the fiscal court of each county]~~ shall establish and maintain ***an animal shelter***~~[a dog pound]~~ as a means of facilitating and ***administering KRS 258.095 to 258.500. One (1) or more counties may enter into intergovernmental agreements for the establishment of regional animal shelters, or may contract with entities authorized to maintain sheltering and animal control services. Animal shelters shall meet the standards provided by subsection (3)(b) of Section 13 of this Act within three (3) years after the effective date of this Act. Governing bodies may adopt additional standards and ordinances related to public health, safety, enforcement, and the efficient and appropriate operation of their shelters and their animal control programs***~~[administration of this chapter. In counties of small population, arrangements may be made for the joint establishment and operation of dog pounds by two (2) or more counties on a mutually satisfactory basis. Instead of setting up pounds, one (1) or more counties acting jointly may take advantage of the facilities of suitable pounds already in operation by counties, cities, humane societies, or other organizations or individuals. Fiscal courts may adopt and enforce regulations relative to pound standards, the naming of persons who shall serve as dog wardens, providing for the fixing of salaries of wardens and assistants, and such other matters that may be incidental to efficient and proper operation of the dog pound plan]~~.

(2)~~[As a means of providing a portion of the funds for setting up and operating dog pounds, fifty cents ($0.50) out of the one dollar and fifty cents ($1.50) paid for every dog license sold in each county shall be credited by the department to a special enforcement fund to be refunded to the respective counties on a pro rata basis determined by the licenses sold in each county, and shall be used in meeting expenses of the dog warden and the dog pound plan.~~

~~(3) Dog wardens may be designated as agents of the department for purposes of appraising livestock losses pursuant to KRS 258.275.~~

~~(4)]~~ Cities~~[, counties, urban-county governments, or charter county governments]~~ may employ***, appoint, or contract with*** animal control officers***, or may contract with an entity that employs, appoints, or contracts with animal control officers,*** for the enforcement of this chapter and local ***animal***~~[dog]~~ control ordinances within their corporate limits. Cities~~[, urban-county governments, or charter county governments]~~ may enter into agreements with the counties for the enforcement of the county's ***animal control*** ordinances. The agreement shall include, but shall not necessarily be limited to, setting out the jurisdiction and the duties of the ***animal control*** officer~~[or warden]~~ respective to the agreement.

(3)~~[(5)]~~ ~~[Dog wardens and]~~Animal control officers shall have the authority to issue uniform citations***, local citations, or local notices***~~[only]~~ for the enforcement of the provisions of this chapter***, the provisions of the Kentucky Revised Statutes relating to cruelty, mistreatment, or torture of animals, and animal***~~[or dog]~~ control ordinances in their respective jurisdictions.

Section 16. KRS 258.215 is amended to read as follows:

(1) Peace officers~~[, dog wardens,]~~ or animal control officers shall seize and impound any dog which does not bear a ***valid rabies***~~[proper license]~~ tag or other legible identification which is found running at large~~[, but if an officer, dog warden, or animal control officer, after diligent effort to do so, should fail to seize the dog, it shall then become his duty to destroy the dog by any reasonable and humane means]~~. Any dog which an officer~~[, dog warden,]~~ or animal control officer seizes shall be impounded ***in the designated animal shelter of the county and confined in a humane manner. If, after a reasonable effort, the seizure of an unrestrained dog cannot be made, or the dog presents a hazard to public safety or property or has an injury or physical condition which causes the dog to suffer, the animal control officer or peace officer may immediately destroy the dog by the most reasonable and humane means then available.***

(2) (a) Impounded dogs shall be kept for ***not less than***~~[a period of]~~ five (5)~~[or seven (7)]~~ days, ***unless reclaimed by their owners. Dogs not reclaimed and those not placed in suitable new homes may be humanely euthanized after the five (5) day holding period, unless the dog has an injury or physical***

condition which causes it to suffer. In those cases the animal shelter may immediately euthanize the dog, and if a human being has been bitten by the dog, the dog shall be tested for rabies.

(b) ***If an owner is identified, the impounding agency shall immediately notify the owner of the impoundment by the most expedient means available***~~[to be determined by the local animal shelter. If the dog is not claimed by the owner or sold in accordance with other provisions of this chapter, then the dog may be destroyed in some humane manner]~~.

(c) Any animal shelter, public or private, which takes in stray ***animals***~~[dogs]~~ and does not have regular hours for public access, shall post semimonthly either in a local newspaper or the newspaper with the highest circulation in the county, the shelter location, hours of operation, the period that impounded ***animals***~~[dogs]~~ shall be held, and a contact number.

(3) Upon reclaiming an impounded dog, cat, or ferret, the owner shall show proof of a valid rabies vaccination. If proof of the vaccination cannot be provided, the owner shall purchase a vaccination voucher from the animal shelter. The voucher shall be valid for ten (10) days from the date of issuance and shall be used in the prescribed time period. The animal shelter shall reimburse the veterinarian for the amount of the voucher upon presentation to the shelter by the administering veterinarian.

(4) The owner of an impounded animal is responsible for all fees associated with the impoundment of the animal. If the owner can be identified, the fees are due even if the owner does not reclaim the animal.

(5) Dogs, cats, or ferrets which have bitten a person shall be maintained in quarantine by the owner for ten (10) days from the date of the bite. Owners who fail to properly quarantine their animals shall be subject to a citation for violation of this subsection and the dog, cat, or ferret shall be removed to the animal shelter for the remainder of the quarantine period. The owner shall be responsible for all associated fees of the quarantine and impoundment.

(6)~~[(2)]~~ A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if a hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, the owner or handler shall not be deemed to be in violation of the provisions of this section as a result of the dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler.

Section 17. KRS 258.225 is amended to read as follows:

(1) It shall be unlawful for any peace officer~~[, dog warden,]~~ or animal control officer to refuse to perform his duties under the provisions of this chapter~~[, or to refuse to assist in the enforcement of this chapter upon request of the Commissioner]~~.

(2) It shall be unlawful for any person to interfere with any ***peace*** officer,~~[dog warden, or]~~ animal control officer, or agent in the enforcement of this chapter.

Section 18. KRS 258.235 is amended to read as follows:

(1) Any person***, without liability,*** may kill or seize any dog which ***is observed attacking any person*** ~~[he sees in the act of pursuing or wounding any livestock, or wounding or killing poultry, or attacking human beings, whether or not such dog bears the license tag required by the provisions of this chapter. There shall be no liability on such person in damages or otherwise for killing, injuring from an attempt to kill, or for seizing the dog]~~.

(2) Any ***livestock owner or his agent, without liability, may kill any dog trespassing on that owner's property and observed in the act of pursuing or wounding his livestock***~~[unlicensed dog, not accompanied by its owner or keeper, that enters any field or inclosure where livestock or poultry are confined shall constitute a private nuisance and the owner or tenant of such field or inclosure, or his agent or servant, may kill or seize such dog while it is in the field or inclosure, without liability or responsibility of any nature for killing, injuring from an attempt to kill, or for seizing the dog]~~.

(3) Any dog ***determined to be vicious by a court and allowed to be returned to an owner shall be confined in a locked enclosure at least seven (7) feet high or a locked kennel run with a secured top. The dog may leave the enclosure only to visit the veterinarian or to be turned in to an animal shelter. The dog shall be muzzled if leaving the enclosure for either of these purposes***~~[deemed in violation of this section and seized by a property owner or his agent shall be surrendered over to the dog warden, animal control officer, or a peace officer for impoundment as stipulated in KRS 258.215]~~.

(4) ***Any owner whose dog is found to have caused damage to a person, livestock, or other property shall be responsible for that damage***~~[Subsection (2) of this section shall not apply to licensed dogs, when accompanied by their owner or handler, unless caught in the act of wounding or killing any livestock, or wounding or killing poultry, or attacking human beings]~~.

(5) (a) Any person who has been attacked by a dog, or anyone ***acting on behalf of that***~~[for such]~~ person, may make a complaint before the district court, charging the owner or keeper of ***the***~~[such]~~ dog with harboring a vicious dog. A copy of ***the***~~[such]~~ complaint shall be served upon the person so charged in the same manner and subject to the laws regulating the service of summons in civil actions directing him to appear for a hearing of ***the***~~[such]~~ complaint at a time fixed ***in the complaint***~~[therein]~~. If ***the***~~[such]~~ person fails to appear at the time fixed, or if upon a hearing of the parties and their witnesses, the court finds the person so charged is the owner or keeper of the dog in question, and that the dog has viciously and without cause, attacked a human being when off the premises of the owner or keeper, the person shall be subject to the penalties set forth in KRS 258.990(3)(b), and the court shall further order the owner or keeper to~~[henceforth]~~ keep the dog securely confined ***as provided by subsection (3) of this section***~~[by chain leash or enclosed pen of sufficient strength to securely restrain the dog from being a public threat]~~, or the court may order the dog to be destroyed.

(b) The~~[dog warden or duly appointed]~~ animal control officer shall act as an officer of the court for the enforcement of any orders of the court in ***his***~~[their]~~ jurisdiction pertaining to this subsection.

(6) For his services in ***the***~~[such]~~ proceedings, ***a***~~[the]~~ peace officer shall be entitled to the same fees to which he is entitled for performing similar services in civil cases. In all proceedings under this section, ***the***~~[such]~~ court shall place the costs upon either party as ***it***~~[he]~~ may determine.

(7) It shall be unlawful for the owner or keeper of any vicious dog**,** after receiving an order under subsection (5) of this section, to permit ***the***~~[such]~~ dog to run at large, or to appear ***in public except as provided in subsection (3) of this section***~~[on the public highways unless in leash]~~. Any ***vicious***~~[such]~~ dog found running at large may be killed by any~~[dog warden,]~~ animal control officer~~[,]~~ or peace officer without liability for damages for ***the killing***~~[such killings]~~.

Section 19. KRS 258.245 is amended to read as follows:

All ***dogs that have a valid rabies vaccination and bear identification***~~[licensed dogs]~~ are hereby declared to be personal property and subjects of larceny. Except as provided in KRS 258.235, it shall be unlawful for any person~~[,]~~ except a peace officer~~[, dog warden,]~~ or animal control officer to destroy, or attempt to destroy, any dog ***that***~~[which]~~ bears ***identification***~~[a license tag for the current year]~~.

Section 20. KRS 258.255 is amended to read as follows:

Every female dog in heat shall be confined in a building or secure enclosure in such a manner that the female dog cannot come in contact with a male dog except for a planned breeding~~[It shall be unlawful for the owner or keeper of any female dog to permit her to go beyond the premises of such owner or keeper at any time she is in heat, unless she is properly in leash]~~.

Section 21. KRS 258.265 is amended to read as follows:

(1) ***An owner shall exercise proper care and control of his dog to prevent the dog from violating any local government nuisance ordinance***~~[The owner or keeper of every dog shall at all times between the hours of sunset and sunrise of each day keep such dog:~~

~~(a) Confined within an inclosure from which it cannot escape, or~~

~~(b) Firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured, or~~

~~(c) Under the reasonable control of some person or, when engaged in lawful hunting accompanied by an owner or handler. A hound or other hunting dog which has been released from confinement for hunting purposes shall be deemed to be under reasonable control of its owner or handler while engaged in or returning from hunting, and, if such a hunting dog becomes temporarily lost from a pack or wanders from actual control or sight of its owner or handler, such owner or handler shall not be deemed to be in violation of the provisions of this section as a result of such dog's having become temporarily lost or having wandered from immediate control or sight of the owner or handler]~~.

(2) Any peace officer~~[, dog warden,]~~ or animal control officer may seize or destroy any dog found running at large between the hours of sunset and sunrise and unaccompanied and not under the control of ***its*** owner or handler. ~~[However,]~~A peace officer~~[, dog warden,]~~ or animal control officer shall be under a duty to make a fair and reasonable effort to determine whether any dog found at large between sunset and sunrise is a hound or other hunting dog which has become lost temporarily from a pack or wandered from immediate control of its owner, or handler, and if he is reasonably sure that the dog is a hunting dog, then he shall not destroy the dog, unless it is found in the act of pursuing or wounding livestock, or wounding or killing poultry, or attacking human beings.

(3) A hound or hunting dog may be unrestrained when engaged in lawful hunting activities while on private or public property designated or authorized for that purpose.

Section 22. KRS 258.365 is amended to read as follows:

Nothing in this chapter shall be construed to prohibit or limit the right of any ***governing body***~~[city]~~ to pass or enforce any ordinance with respect to the regulation of dogs ***or other animals***, the provisions of which are not inconsistent with the provisions of this chapter. Nothing in this chapter shall be construed to repeal any of the provisions of the fish and game laws of the Commonwealth of Kentucky now in effect, nor any laws relating to the powers and duties of the secretary for health services, or any health officer relating to ***rabid animals or animals***~~[mad dogs or dogs]~~ affected with any disease, or to prohibit the destroying of ***any animal***~~[licensed or unlicensed dogs]~~ in accordance with the provisions of any quarantine regulations, made in accordance with the provisions of any local or state health law.

Section 23. KRS 258.500 is amended to read as follows:

(1) As used in subsections (1) to (11) of this section, "person" means a "person with a disability" as defined by KRS 210.770. "Person" also includes a trainer of an assistance dog.

(2) If a person is accompanied by an assistance dog, neither the person nor the dog shall be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the person be denied full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort when accompanied by an assistance dog.

(3) Any person accompanied by an assistance dog shall be entitled to full and equal accommodations on all public transportation, if the dog does not occupy a seat in any public conveyance, nor endanger the public safety.

(4) No person shall be required to pay additional charges or fare for the transportation of any accompanying assistance dog.

(5) No person accompanied by an assistance dog shall be denied admittance and use of any public building, nor denied the use of any elevator operated for public use.

(6) Any person accompanied by an assistance dog may keep the dog in his immediate custody while a tenant in any apartment, or building used as a public lodging.

(7) The provisions of this section shall not apply unless the assistance dog has been trained or is being trained by a recognized training agency or school, and is properly harnessed.

(8) (a) Except as provided in paragraph (b) of this subsection, all persons accompanied by an assistance dog shall have in their personal possession a certificate issued by the assistance dog training agency or school establishing that their dogs have been so trained.

(b) All trainers accompanied by an assistance dog shall have in their personal possession identification verifying that they are trainers of assistance dogs.

(9) The provisions of this section shall not apply unless the person complies with the legal limitations applicable to nondisabled persons and unless all requirements of KRS 258.015 ***and***~~[,]~~ 258.135~~[and 258.145]~~ have been complied with.

(10) Assistance dogs are exempt from all state and local licensing fees.

(11) Licensing authorities shall accept that the dog for which the license is sought is an assistance dog when a copy of the certificate, as required under subsection (8) of this section, is attached to the licensing form.

(12) No person shall willfully or maliciously interfere with an assistance dog or the dog's user.

Section 24. KRS 258.990 is amended to read as follows:

(1) Any person who violates KRS 258.015, 258.035, 258.055, 258.065**,** or 258.085~~[,]~~ shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Each day of violation shall constitute a separate offense.

(2) The owner of any dog***, cat, or ferret which bites a human being***~~[not vaccinated according to the provisions of this chapter]~~ shall be liable to pay all damages for personal injuries resulting from the bite of ***the***~~[such]~~ dog, ***cat, or ferret***~~[if rabid]~~.

(3) (a) Any person violating or failing or refusing to comply with KRS 258.095 to 258.365~~[and subsections (3) and (4) of this section]~~, except KRS 258.235(5)(a), shall, upon conviction, be fined not less than five dollars ($5) ***nor***~~[and not]~~ more than one hundred dollars ($100)**,** or be imprisoned ***in the county jail*** for not less than five (5) nor more than sixty (60) days**,** or both~~[so fined and imprisoned]~~.

(b) Any person violating KRS 258.235(5)(a) shall be punished by a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200), or by imprisonment in the county jail for not less than ten (10) nor more than sixty (60) days, or~~[by]~~ both~~[fine and imprisonment]~~.

(4) All fines collected under subsection (3) of this section shall after costs and commissions have been deducted, be paid to the department to be credited to the ***Animal Control and Care Fund***~~[livestock fund]~~.

Section 25. KRS 67.592 is amended to read as follows:

(1) The county judge/executive shall designate the sheriff of the county, or, if there is a county police department, may designate the chief of the county police, as custodian of all property:

(a) Alleged to be or suspected of being the proceeds of crime;~~[or]~~

(b) Alleged to be or suspected of having been used to facilitate the commission of a crime;~~[or]~~

(c) Which is subject to confiscation or forfeiture, excluding property subject to forfeiture pursuant to KRS Chapter 218A, or both, under any provision of the Kentucky Revised Statutes;~~[or]~~

(d) Which is taken from the person of a prisoner, except for ***any***~~[such]~~ personal property ***that***~~[as]~~ may be in the custody of a prisoner upon his admission to jail, in which case all property which he is not permitted to retain upon admission to jail shall be placed in the custody of the jailer;~~[or]~~

(e) Which is lost or abandoned and taken into custody by any peace officer, or the courts; or

(f) Which is taken from persons supposed to be insane, intoxicated, or otherwise incapable of taking care of themselves.

(2) Any peace officer, except for the Kentucky State Police, or court having custody of the property shall, as soon as practicable, deliver it into the custody of the property clerk.

(3) The sheriff or chief of county police designated as custodian of property shall appoint from persons on his staff, or may employ, a person to serve as property clerk and other persons necessary as deputy property clerks.

(4) All the property shall be particularly described and registered by the property clerk, or his deputy, in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom it was taken, with the general circumstances of its receipt, the name of the officer recovering the property, the names of all claimants ***to the property***~~[thereto]~~, and any final disposition of the property. The property clerk shall advertise the property, if it is not the subject of a forfeiture proceeding, as to the amount and disposition of the property.

(5) The fiscal court of the county may prescribe regulations in regard to the duties of the property clerk and his deputies, and require security for the faithful performance of the duties imposed by this section.

(6) All animals stolen, strayed, lost, or confiscated that come into the possession of the property clerk shall be sent to ***an animal shelter***~~[a public pound]~~ located within the county, if there is one, or if there is none to ***an animal shelter***~~[a public pound]~~ in another county.

(7) No property shall be delivered to the property clerk or his deputy except as provided in this section.

(8) No property shall be disposed of by the property clerk or his deputy except in the manner prescribed by law.

(9) The provisions of this section shall apply in all unincorporated areas of a county and in all cities which do not appoint a property custodian pursuant to KRS 95.845.

Section 26. KRS 212.625 is amended to read as follows:

Each city-county board of health created by KRS 212.350 shall establish, maintain**,** and operate ***an animal shelter***~~[a public pound]~~ for animals in which, except as otherwise provided by law, shall be impounded all stray, vicious**,** or diseased animals taken up or collected in ***the***~~[such]~~ county, whether in incorporated or unincorporated areas, by any public officer or authority or by any other person. Each~~[such]~~ board shall, throughout the county, including all municipalities ***within the county***~~[therein]~~, enforce all statutes, ordinances of cities, orders or resolutions of the fiscal court of the county**,** and regulations of ***the***~~[such]~~ board or any other governmental body or agency authorized to ***promulgate***~~[adopt such]~~ regulations, relating to the taking up, collection**,** and impounding of stray, vicious**,** or diseased animals. Each~~[such]~~ board may promulgate and enforce reasonable and necessary~~[rules and]~~ regulations providing for the collection and impounding of~~[such]~~ animals and governing the use and operation of ***animal shelters***~~[such public pounds]~~.

Section 27. KRS 257.100 is amended to read as follows:

(1) Any peace officer**,** ***animal control officer,*** or any officer of the accredited Humane Society or Society for the Prevention of Cruelty to Animals may destroy or kill or cause to be destroyed or killed, any animal found abandoned and suffering and not properly cared for, or appearing to be injured, diseased**,** or suffering past recovery for any useful purpose.

(2) Before destroying the animal the officer shall obtain the judgment to that effect of a veterinarian, or of two (2) reputable citizens called by him to view the animal in his presence, or shall obtain consent to the destruction from the owner of the animal.

(3) (a) Any animal placed in the custody of a licensed veterinarian for treatment, boarding**,** or other care, which shall be unclaimed by its owner or his agent for a period of more than ten (10) days after written notice by certified mail, return receipt requested, is given the owner or his agent at his last known address, shall be deemed to be abandoned and may be turned over to the nearest humane society~~[, dog pound]~~ or animal shelter or disposed of as ***the***~~[such]~~ custodian may deem proper.

(b) The giving of notice to the owner, or the agent of the owner of ***the***~~[such]~~ animal by the licensed veterinarian~~[, as provided herein]~~ shall relieve the licensed veterinarian and any custodian to whom ***the***~~[such]~~ animal may be given of any further liability for disposal.

(4) For the purpose of this section, the term "abandon" ***means***~~[shall mean]~~ to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner, or his agent.~~[Such]~~ Abandonment shall constitute the relinquishment of all rights and claims by the owner to ***the***~~[such]~~ animal.

Section 28. KRS 321.181 is amended to read as follows:

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

(1) "Board" means the Kentucky Board of Veterinary Examiners;

(2) "Animal" means any animal, except human beings;

(3) "Compensation" includes any gift, bonus, fee, money, credit, or other thing of value;

(4) "Veterinarian" means a practitioner of veterinary medicine who is duly licensed in the Commonwealth of Kentucky;

(5) "Practice of veterinary medicine" means:

(a) To diagnose, treat, correct, change, relieve, or prevent: animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above;

(b) To engage in veterinary surgery, obstetrics, embryo transfer, dentistry, acupuncture, manipulation, and all other branches or specialties of veterinary medicine and the prescribing, administering, or dispensing

of drugs and medications for veterinary purposes, in accordance with the applicable federal statutes and regulations governing controlled prescription and legend drugs; and

(c) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraphs (a) and (b) of this subsection;

(6) "Embryo transfer" means to remove any embryo from any animal for the purpose of transplanting the embryo into another female animal or for the purpose of cryopreserving the embryo, or to implant the embryo into any animal, including food and companion animals;

(7) "Chemical restraint" means the use of any prescription or legend drug that restrains or tranquilizes the animal;

(8) "Direct supervision" means the veterinarian is on the premises, and is quickly and easily available, and the animal has been examined by a veterinarian at the times acceptable veterinary medical practice requires, consistent with the particular delegated animal health care tasks;

(9) "Indirect supervision" means the veterinarian does not have to be on the premises as long as a valid veterinary/client/patient relationship has been established and the veterinary technologist, veterinary technician, or veterinary assistant has been instructed on the applicable animal health care tasks in accordance with KRS 321.441 and 321.443;

(10) "Emergency" means the animal has been placed in a life threatening condition and immediate treatment is necessary to sustain life;

(11) "Impaired veterinarian program" means the Kentucky Veterinary Medical Association sponsored program for the identification, intervention, and monitoring of veterinarians impaired as a result of alcoholism, chemical dependence, or drug abuse;

(12) "Veterinary medical impairment committee" means a committee of the Kentucky Veterinary Medical Association, comprised of individuals who have expertise in the areas of alcoholism, chemical dependence, drug abuse, or physical or mental illness, that has been designated by the Kentucky Veterinary Medical Association to perform activities related to the impaired veterinarian program;

(13) "Veterinary technologist" means a person who has successfully completed an accredited program of veterinary technology approved by the board and who is registered in accordance with KRS 321.441;

(14) "Veterinary technician" means a person who has an associate degree related to veterinary sciences, or its equivalent as approved by the board, and who is registered in accordance with KRS 321.441;

(15) "Veterinary assistant" means a lay person employed by a licensed veterinarian in accordance with KRS 321.443;

(16) "Certified animal control agency" means a county or municipal animal shelter~~[, dog pound,]~~ or animal control agency; private humane society; state, county, or municipal law enforcement agency; or any combination ***of those entities***~~[thereof]~~ that temporarily houses stray, unwanted, or injured animals and that is certified under the provisions of KRS 321.207; and

(17) "Certified animal euthanasia specialist" means a person employed by a certified animal control agency who is authorized by the board, under KRS 321.207, to humanely euthanize animals by administering drugs designated by the board for euthanasia.

Section 29. KRS 436.605 is amended to read as follows:

(1) ***Animal control officers,***~~[Dog wardens]~~ and officers and agents of humane societies ***who are employed by, appointed by, or have contracted with a city, county, urban-county, charter county, or consolidated local government to provide animal sheltering or animal control services*** shall have the powers of peace officers***, except for the power of arrest,*** for the purpose of enforcing the provisions of the Kentucky Revised Statutes relating to cruelty***,***~~[and]~~ mistreatment***, or torture*** of animals, provided they possess the qualifications required under KRS 61.300.

(2) ***When*** any peace officer, ***animal control officer,*** or any officer or agent of any society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth ***who is employed by, appointed by, or has contracted with a city, county, urban-county, charter county, or consolidated local***

government to provide animal sheltering or animal control services makes an~~[, who shall make]~~ oath before any judge of a District Court that he has reasons to believe or does believe that an act of cruelty***, mistreatment, or torture of***~~[to]~~ animals is being committed in a building, barn***,*** or other enclosure, the~~[said]~~ judge shall~~[thereupon on proof of demand having been made,]~~ issue a search warrant directed to ***the***~~[any]~~ peace officer, ***animal control officer,*** or~~[any]~~ officer or agent of ***the***~~[any]~~ society or association for the prevention of cruelty to animals~~[duly incorporated under the laws of this Commonwealth or other peace officer]~~ to search the~~[said]~~ premises***.***~~[, and]~~ If~~[upon such search]~~***a peace officer finds***~~[it is found]~~ that an act of cruelty***, mistreatment, or torture of***~~[to]~~ animals is being perpetrated***, the offender or offenders shall be immediately arrested by the peace officer and brought before the***~~[to forthwith arrest such offender or offenders and bring him or them before the said]~~ court for trial. ***If an animal control officer or an officer or agent of a society or association for the prevention of cruelty to animals finds that an act of cruelty, mistreatment, or torture of animals is being perpetrated, the officer or agent shall summon a peace officer to arrest the offender or offenders and bring them before the court for trial.***

Section 30. KRS 436.610 is amended to read as follows:

All animals of the same species, which are on the property when an animal is caused to fight for pleasure or profit, in violation of the provisions of KRS 525.125 and 525.130***,*** shall be confiscated and turned over to the county ***animal control officer employed, appointed, or contracted with as provided by***~~[dog warden appointed pursuant to]~~ KRS 258.195, if there are reasonable grounds to believe that ***the***~~[such]~~ animals were on the property for the purpose of fighting.

Section 31. The following KRS sections are repealed:

258.025 Secretary may exempt dogs from vaccination.

258.105 Enforcement by commissioner of agriculture -- Employment and powers of personnel.

258.115 Advisory committee.

258.125 Livestock fund created -- Expenditures -- Reversion of excess.

258.145 Licenses and tags -- Tattooing of dogs -- Tag to be affixed to collar -- Burden of proof of license.

258.155 License for part of year.

258.165 Kennel licenses and tags.

258.175 Dogs to be kept in kennel.

258.185 Records of dog and kennel licenses.

258.205 Dog temporarily in state need not be licensed -- Burden of proof.

258.275 Liability for property loss or injury by dog or coyote -- Procedures for enforcing claims for damages.

258.285 Payments from livestock fund -- Subrogation of claimant's rights.

258.295 Payment by dog owner bars payment from livestock fund -- Maximum sums for certain livestock and poultry -- Appraisal value.

258.305 Compensation of dog owner where licensed dog is killed.

258.325 Confinement and destruction of dog found to have caused loss or damage to livestock, persons, or poultry -- Harborer of unlicensed dog forfeits rights in livestock fund.

258.345 Quarantine of dogs in case of excessive damage to livestock, poultry, or domestic game birds -- Destruction of dogs in violation of quarantine.

258.355 Nonliability of state for losses, injuries or destruction of livestock, poultry or dogs except claims arising after June 30, 1954.

Section 32. Any funds remaining in the livestock fund sixty (60) days after the effective date of Sections 1 to 32 of this Act shall be deposited in the animal control and care fund created by Section 13 of this Act.

Section 33. KRS 321.211 is amended to read as follows:

(1) Each person licensed as a veterinarian shall~~[annually]~~, on or before September 30 ***of each even-numbered year***, pay to the board a renewal fee to be promulgated by administrative regulation of the board for the

renewal of his license. All licenses not renewed by September 30 of each ***even-numbered*** year shall expire based on the failure of the individual to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after September 30, ***as required for renewal in subsection (1) of this section,*** during which time individuals may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board. All licenses not renewed by November 30 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(3) After the sixty (60) day grace period, individuals with a terminated license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the board. No person who applies for reinstatement after termination of his license shall be required to submit to any examination as a condition for reinstatement, if reinstatement application is made within five (5) years from the date of termination.

(4) A suspended license is subject to expiration and termination and shall be renewed as provided in this chapter. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(5) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (3) of this section and the renewal fee as set forth in subsection (1) of this section.

(6) A person who fails to reinstate his license within five (5) years after its termination may not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements of this chapter.

(7) The board may require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulation.

Approved April 22, 2004

CHAPTER 190

(SB 145)

AN ACT relating to crimes and punishments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years.

(2) Indecent exposure in the first degree is a:

(a) Class B misdemeanor for the first offense;

(b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction;

(c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and

(d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.

Section 2. KRS 510.150 is amended to read as follows:

(1) A person is guilty of indecent exposure ***in the second degree*** when he intentionally exposes his genitals under circumstances in which he knows or should know ***that*** his conduct is likely to cause affront or alarm ***to a person eighteen (18) years of age or older***.

(2) Indecent exposure ***in the second degree*** is a Class B misdemeanor.

Approved April 22, 2004

CHAPTER 191

(SB 156)

AN ACT relating to reorganization.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

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

(h) Division of Kentucky State Medical Examiners Office.

(i) Parole Board.

(j) Kentucky State Corrections Commission.

(k) Commission on Correction and Community Service.

2. Education, Arts, and Humanities Cabinet:

(a) Department of Education.

(1) Kentucky Board of Education.

(b) Department for Libraries and Archives.

(c) Kentucky Arts Council.

(d) Kentucky Educational Television.

(e) Kentucky Historical Society.

(f) Kentucky Teachers' Retirement System Board of Trustees.

(g) Kentucky Center for the Arts.

(h) Kentucky Craft Marketing Program.

(i) Kentucky Commission on the Deaf and Hard of Hearing.

(j) Governor's Scholars Program.

(k) Governor's School for the Arts.

(l) Operations and Development Office.

(m) Kentucky Heritage Council.

(n) Kentucky African-American Heritage Commission.

(o) Board of Directors for the Center for School Safety.

3. Natural Resources and Environmental Protection Cabinet:

(a) Environmental Quality Commission.

(b) Kentucky Nature Preserves Commission.

(c) Department for Environmental Protection.

(d) Department for Natural Resources.

(e) Department for Surface Mining Reclamation and Enforcement.

(f) Office of Legal Services.

(g) Office of Information Services.

(h) Office of Inspector General.

4. Transportation Cabinet:

(a) Department of Highways.

1. Office of Program Planning and Management.

2. Office of Project Development.

3. Office of Construction and Operations.

4. Office of Intermodal Programs.

5. Highway District Offices One through Twelve.

(b) Department of Vehicle Regulation.

(c) Department of Administrative Services.

(d) Department of Fiscal Management.

(e) Department of Rural and Municipal Aid.

(f) Department of Human Resources Management.

(g) Office of the Secretary.

(h) Office of General Counsel and Legislative Affairs.

(i) Office of Public Affairs.

(j) Office of Transportation Delivery.

(k) Office of Minority Affairs.

(l) Office of Policy and Budget.

(m) Office of Technology.

(n) Office of Quality.

(o) Office of the Transportation Operations Center.

5. Cabinet for Economic Development:

(a) Department of Administration and Support.

(b) Department for Business Development.

(c) Department of Financial Incentives.

(d) Department of Community Development.

(e) Department for Regional Development.

(f) Tobacco Research Board.

(g) Kentucky Economic Development Finance Authority.

6. ***Environmental and*** Public Protection~~[and Regulation]~~ Cabinet:

(a) Public Service Commission.

(b) Department of Insurance.

(c) Department of Housing, Buildings and Construction.

(d) Department of Financial Institutions.

(e) Department of Mines and Minerals.

(f) Department of Public Advocacy.

(g) Department of Alcoholic Beverage Control.

(h) ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~.

(i) Board of Claims.

(j) Crime Victims Compensation Board.

(k) Kentucky Board of Tax Appeals.

~~(l)[Backside Improvement Commission.~~

~~(m)]~~ Office of Petroleum Storage Tank Environmental Assurance Fund.

(m)~~[(n)]~~ Department of Charitable Gaming.

(n)~~[(o)]~~ Mine Safety Review Commission.

7. Cabinet for Families and Children:

(a) Department for Community Based Services.

(b) Department for Disability Determination Services.

(c) Public Assistance Appeals Board.

(d) Office of the Secretary.

(1) Kentucky Commission on Community Volunteerism and Service.

(e) Office of the General Counsel.

(f) Office of Program Support.

(g) Office of Family Resource and Youth Services Centers.

(h) Office of Technology Services.

(i) Office of the Ombudsman.

(j) Office of Human Resource Management.

8. Cabinet for Health Services.

(a) Department for Public Health.

(b) Department for Medicaid Services.

(c) Department for Mental Health and Mental Retardation Services.

(d) Kentucky Commission on Children with Special Health Care Needs.

(e) Office of Certificate of Need.

(f) Office of the Secretary.

(g) Office of the General Counsel.

(h) Office of the Inspector General.

(i) Office of Aging Services.

9. Finance and Administration Cabinet:

(a) Office of Financial Management.

(b) Office of the Controller.

(c) Department for Administration.

(d) Department of Facilities Management.

(e) State Property and Buildings Commission.

(f) Kentucky Pollution Abatement Authority.

(g) Kentucky Savings Bond Authority.

(h) Deferred Compensation Systems.

(i) Office of Equal Employment Opportunity Contract Compliance.

(j) Office of Capital Plaza Operations.

(k) County Officials Compensation Board.

(l) Kentucky Employees Retirement Systems.

(m) Commonwealth Credit Union.

(n) State Investment Commission.

(o) Kentucky Housing Corporation.

(p) Governmental Services Center.

(q) Kentucky Local Correctional Facilities Construction Authority.

(r) Kentucky Turnpike Authority.

(s) Historic Properties Advisory Commission.

(t) Kentucky Tobacco Settlement Trust Corporation.

(u) Eastern Kentucky Exposition Center Corporation.

(v) State Board for Proprietary Education.

10. Labor Cabinet:

(a) Department of Workplace Standards.

(b) Department of Workers' Claims.

(c) Kentucky Labor-Management Advisory Council.

(d) Occupational Safety and Health Standards Board.

(e) Prevailing Wage Review Board.

(f) Workers' Compensation Board.

(g) Kentucky Employees Insurance Association.

(h) Apprenticeship and Training Council.

(i) State Labor Relations Board.

(j) Kentucky Occupational Safety and Health Review Commission.

(k) Office of Administrative Services.

(l) Office of Information Technology.

(m) Office of Labor-Management Relations and Mediation.

(n) Office of General Counsel.

(o) Workers' Compensation Funding Commission.

(p) Employers Mutual Insurance Authority.

11. Revenue Cabinet:

(a) Department of Property Valuation.

(b) Department of Tax Administration.

(c) Office of Financial and Administrative Services.

(d) Department of Law.

(e) Department of Information Technology.

(f) Office of Taxpayer Ombudsman.

12. Tourism Development Cabinet:

(a) Department of Travel.

(b) Department of Parks.

(c) Department of Fish and Wildlife Resources.

(d) Kentucky Horse Park Commission.

(e) State Fair Board.

(f) Office of Administrative Services.

(g) Office of General Counsel.

(h) Tourism Development Finance Authority.

13. Cabinet for Workforce Development:

(a) Department for Adult Education and Literacy.

(b) Department for Technical Education.

(c) Department of Vocational Rehabilitation.

(d) Department for the Blind.

(e) Department for Employment Services.

(f) Kentucky Technical Education Personnel Board.

(g) The Foundation for Adult Education.

(h) Department for Training and Reemployment.

(i) Office of General Counsel.

(j) Office of Communication Services.

(k) Office of Workforce Partnerships.

(l) Office of Workforce Analysis and Research.

(m) Office of Budget and Administrative Services.

(n) Office of Technology Services.

(o) Office of Quality and Human Resources.

(p) Unemployment Insurance Commission.

14. Personnel Cabinet:

(a) Office of Administrative and Legal Services.

(b) Department for Personnel Administration.

(c) Department for Employee Relations.

(d) Kentucky Public Employees Deferred Compensation Authority.

(e) Kentucky Kare.

(f) Division of Performance Management.

(g) Division of Employee Records.

(h) Division of Staffing Services.

(i) Division of Classification and Compensation.

(j) Division of Employee Benefits.

(k) Division of Communications and Recognition.

(l) Office of Public Employee Health Insurance.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.

2. Council on Postsecondary Education.

3. Department for Local Government.

4. Kentucky Commission on Human Rights.

5. Kentucky Commission on Women.

6. Department of Veterans' Affairs.

7. Kentucky Commission on Military Affairs.

8. The Governor's Office for Technology.

9. Commission on Small Business Advocacy.

10. Education Professional Standards Board.

Section 2. KRS 230.210 is amended to read as follows:

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

(1) "Association" means any person licensed by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;

(2) "***Authority***~~[Commission]~~" means the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~;

(3)~~["Commissioner" means a commissioner of the Kentucky Racing Commission;~~

~~(4)]~~ "Thoroughbred race or thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey;

(4)~~[(5)]~~ "Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;

(5)~~[(6)]~~ "Appaloosa race or Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;

(6)~~[(7)]~~ "Horse race meeting" means horse racing run at an association licensed and regulated by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, and may include thoroughbred, harness, and quarter horse racing;

(7)~~[(8)]~~ "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;

(8)~~[(9)]~~ "Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;

(9)~~[(10)]~~ "Track" means any association duly licensed by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ to conduct horse racing. "Track" shall include any facility or real property that is owned, leased, or purchased by a track within the same geographic area within a sixty (60) mile radius of a track but not contiguous to track premises, upon ***authority***~~[commission]~~ approval, and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area;

(10)~~[(11)]~~ "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;

(11)~~[(12)]~~ "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;

(12)~~[(13)]~~ "Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;

(13)~~[(14)]~~ "Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;

(14)~~[(15)]~~ "Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;

(15)~~[(16)]~~ "Receiving track" means a track where simulcasts are displayed for wagering purposes. A track that submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility that meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;

(16)~~[(17)]~~ "Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track; and

(17)~~[(18)]~~ "Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, ten percent (10%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(18)~~[(19)]~~ "Kentucky Quarter Horse Purse Program" means a purse program established to receive funds from the ***authority***~~[commission]~~ for purse programs established in KRS 230.3771(4) to supplement purses for quarter horse races. The purse program shall be administered by the Kentucky Quarter Horse Racing Association.

Section 3. KRS 230.225 is amended to read as follows:

(1) The ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ is created as an independent agency of state government to regulate the conduct of horse racing and pari-mutuel wagering on horse racing***, and related activities*** within the Commonwealth of Kentucky. ***The authority shall be attached to the Environmental and Public Protection Cabinet for administrative purposes***~~[Any program or activity previously subject to the jurisdiction of the Kentucky State Racing Commission or the Kentucky Harness Racing Commission shall be subject to the jurisdiction of the Kentucky Racing Commission on March 30, 1992]~~.

(2) The ***Kentucky Horse Racing Authority shall consist of thirteen (13) members***~~[Kentucky Racing Commission shall consist of eleven (11) commissioners]~~ appointed by the Governor***, with the secretaries of the Environmental and Public Protection Cabinet, Commerce Cabinet, and Economic Development Cabinet serving as ex officio, nonvoting members. Two (2) members shall have no financial interest in the business or industry regulated. The members of the authority shall be appointed to serve for a term of three (3) years except, of the members initially appointed, four (4) shall serve for a term of three (3) years, five (5) shall serve for a term of two (2) years, and four (4) shall serve for a term of one (1) year. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term***. In making appointments, the Governor ***may consider***~~[shall secure broad representation within the horse industry, to include appointment of seven (7)]~~ members broadly representative of the thoroughbred industry and~~[three (3)]~~ members broadly representative of the standardbred, quarter horse, Appaloosa, or Arabian industries. ***The Governor may also consider recommendations from***~~[Recommendations for appointments to the commission shall be sought from various industry groups, to include]~~ the Kentucky Thoroughbred Owners and Breeders, Inc., the Kentucky Division of the Horsemen's Benevolent and Protective Association, the Kentucky Harness Horsemen's Association, and other interested organizations.~~[An additional commissioner shall be appointed by the Governor, with this appointee having no financial interest in the business or industry regulated. For initial appointments three (3) members shall be appointed for one (1) year terms, three (3) for two (2) year terms, three (3) for three (3) year terms, and two (2) for four (4) year terms. Thereafter, all commissioners appointed by the Governor shall serve a term of four (4) years or until their successors are appointed and duly qualified. Any vacancy on the commission shall be filled pursuant to the requirements and procedures for original appointments.]~~

(3) ***Members of the authority***~~[Commissioners]~~ shall receive fifty dollars ($50) per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business. The Governor shall ***appoint one (1) member of the authority to serve as its chairperson who shall serve at the pleasure of the Governor. The Governor shall further designate a second member to serve as vice chair with authority***

to act in the absence of the chairperson~~[designate one (1) of the commissioners as chairman and the commission shall elect one (1) of its members as vice chairman]~~. Before entering upon the discharge of their duties, ***all members of the Kentucky Horse Racing Authority***~~[each commissioner]~~ shall take the constitutional oath of office.

(4) The ***authority***~~[commission]~~ shall establish and maintain a general office for the transaction of its business and may in its discretion establish a branch office or offices. The ***authority***~~[commission]~~ may hold meetings at any of its offices or at any other place when the convenience of the ***authority***~~[commission]~~ requires. All meetings of the ***authority***~~[commission]~~ shall be open and public, and all persons shall be permitted to attend meetings. A majority of the ***authority***~~[commission]~~ shall constitute a quorum for the transaction of its business or exercise of any of its powers.

(5) The duly-promulgated administrative regulations of the ***Kentucky Horse Racing Authority***~~[Kentucky State Racing Commission and the Kentucky Harness Racing Commission]~~, in effect as of ***January 6, 2004***~~[March 30, 1992]~~, shall remain in effect as the initial regulations of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ until revoked or modified by the ***authority***~~[commission]~~.

(6) All licenses approved by, and dates awarded by, the ***Kentucky Horse Racing Authority***~~[respective commissions]~~ shall remain in effect through December 31, ***2004***~~[1992]~~.

(7) Except as otherwise provided, the authority shall be responsible for the following:

(a) Developing programs and procedures for oversight and regulation of horse racing matters, including but not limited to race day medications;

(b) Recommending tax incentives and other options to promote the strength and growth of the thoroughbred industry and to preserve the economic viability of Kentucky's horse farms;

(c) Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of increasing the horse industry's impact on the state's economy;

(d) Developing and supporting programs which ensure that Kentucky remains a national leader in equine research; and

(e) Developing and implementing programs that promote Kentucky's horse and tourism industry.

Section 4. KRS 230.230 is amended to read as follows:

(1) The Governor shall appoint an executive director ***who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director pursuant to KRS 64.640***~~[for the commission for a term of four (4) years who may be removed in the same manner as a commissioner]~~. The executive director shall possess the powers and perform the duties imposed upon him by ***the Governor***~~[this chapter]~~, and other duties as the ***authority***~~[commission]~~ may direct or prescribe. ***The executive director shall:***

(a) Be responsible for the day-to-day operations of the authority;

(b) Set up appropriate organizational structures and personnel policies for approval by the authority;

(c) Appoint all staff;

(d) Prepare annual reports of the authority's program of work;

(e) Carry out policy and program directives of the authority;

(f) Prepare and submit to the authority for its approval the proposed biennial budget of the authority; and

(g) Perform all other duties and responsibilities assigned by law.

The executive director shall cause to be kept a full record of all proceedings before the ***authority***~~[commission]~~ and shall preserve at its general office all books, maps, records, documents, licenses, and other papers of the ***authority***~~[commission]~~. All records of the ***authority***~~[commission]~~ shall be open to inspection by the public during regular office hours. ***With approval of the authority, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the authority.***

(2) The~~[chairman and the]~~ executive director of the ***authority***~~[commission]~~ may employ, dismiss, or take other personnel action concerning an assistant executive director, stenographers, clerks, and other personnel as ***he or she***~~[they]~~ may deem necessary to efficiently operate the ***authority's***~~[commission's]~~ general office or any branch thereof. The~~[chairman and the]~~ executive director of the ***authority***~~[commission]~~ shall fix the compensation of all employees. Any member of the ***authority***~~[commission, the executive director,]~~ or any employee referred to in this section shall be reimbursed for expenses paid or incurred in the discharge of official business when approved by the~~[chairman or]~~ executive director of the ***authority***~~[commission]~~. The compensation of the employees referred to in this section, except for the executive director, together with reimbursement of expenses incurred by employees, a member of the ***authority***~~[commission]~~, or the executive director, shall be paid from ***authority***~~[commission]~~ funds.

Section 5. KRS 230.240 is amended to read as follows:

(1) In addition to the employees referred to in KRS 230.230,~~[the chairman and]~~ the executive director of the ***authority***~~[commission]~~ may employ, dismiss, or take other personnel action and determine the reasonable compensation of stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security officers, and other employees deemed by~~[the chairman or]~~ the executive director to be essential at or in connection with any horse race meeting and in the best interest of racing. The security officers shall be peace officers and conservators of the peace on ***authority***~~[commission]~~ property and at all race tracks and grounds in the Commonwealth and shall possess all the common law and statutory powers and privileges now available or hereafter made available to sheriffs, constables, and police officers for the purpose of enforcing all laws relating directly or indirectly to the conduct of horse racing and pari-mutuel wagering thereon, or the enforcement of laws relating to the protection of persons or property on premises licensed by the ***authority***~~[commission]~~. The ***authority,***~~[commission]~~ for the purpose of maintaining integrity and honesty in racing***,*** shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties. In addition, the ***authority***~~[commission]~~ shall be responsible for seeing that racing officials employed under the provisions of this section have adequate training to perform their duties in a competent manner.

(2) The ***authority***~~[commission]~~ shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The ***authority***~~[commission]~~ may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes. The expense of the laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the various associations licensed under this chapter in the manner and in proportions as the ***authority***~~[commission]~~ shall by administrative regulation provide.

(3) The compensation of the employees referred to in this section shall be paid by the licensee conducting the horse race meeting in connection with which the employees are utilized or employed. The salary of the executive director to the ***authority***~~[commission]~~ shall be prorated among and paid by the various associations licensed under this chapter in the manner as the ***authority***~~[commission]~~ shall, by administrative regulation, provide. The employees referred to in this section shall be deemed employees of the ***authority***~~[commission]~~, and are paid by the licensee or association for convenience only.

(4) Each person, as a condition precedent to the privilege of receiving a license under this chapter to conduct a horse race meeting, shall be deemed to have agreed to pay expenses and compensation as provided in this section and as may be actually and reasonably incurred.

Section 6. KRS 230.250 is amended to read as follows:

When requested by the ***authority***~~[commission]~~, the Attorney General of Kentucky, or ***an***~~[such]~~ assistant Attorney General as he ***or she*** may designate, shall, without additional compensation, advise the ***authority***~~[commission]~~ and represent it in all legal proceedings.

Section 7. KRS 230.260 is amended to read as follows:

The ***authority***~~[commission]~~, in the interest of breeding or the improvement of breeds of horses, shall have all powers necessary and proper to carry out fully and effectually the provisions of this chapter including, but without limitation, the following:

(1) The ***authority*** ~~[commission]~~ is vested with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the ***authority*** ~~[commission]~~, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings; provided, however, no persons shall be excluded or ejected from association grounds solely on the ground of race, color, creed, national origin, ancestry, or sex;

(2) The ***authority*** ~~[commission]~~, its representatives and employees, may visit, investigate and have free access to the office, track, facilities, or other places of business of any licensee for the purpose of satisfying itself that this chapter and its administrative regulations are strictly complied with;

(3) The ***authority*** ~~[commission]~~ shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting;

(4) Applications for licenses shall be made in the form, in the manner, and contain information as the ***authority*** ~~[commission]~~ may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the ***authority*** ~~[commission]~~;

(5) The ***authority*** ~~[commission]~~ shall establish by administrative regulation minimum fees for jockeys to be effective in the absence of a contract between an employing owner or trainer and a jockey. The minimum fees shall be no less than those of July 1, 1985;

(6) Any of the foregoing administrative regulations, to the extent they are promulgated, shall be promulgated, amended, or repealed in conformity with KRS Chapter 13A;

(7) The ***authority*** ~~[commission]~~ may issue subpoenas for the attendance of witnesses before it and administer oaths to witnesses whenever, in the judgment of the ***authority*** ~~[commission]~~, it is necessary to do so for the effectual discharge of its duties;

(8) The ***authority*** ~~[commission]~~ shall have authority to compel any racing association licensed under this chapter to file with the ***authority*** ~~[commission]~~ at the end of its fiscal year, a balance sheet, showing assets and liabilities, and an earnings statement, together with a list of its stockholders or other persons holding a beneficial interest in the association;

(9) The ***authority*** ~~[commission]~~ shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment. Rib protection equipment shall not be included in a jockey's weight.

Section 8. KRS 230.270 is amended to read as follows:

The ***authority*** ~~[commission]~~ shall biennially make a full report to the General Assembly of its proceedings for the two-year period ending December ***31*** ~~[1]~~ preceding the meeting of the General Assembly and may embody in the report such suggestions and recommendations as it deems desirable.

Section 9. KRS 230.280 is amended to read as follows:

(1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the ***authority*** ~~[commission]~~.

(2) The ***authority*** ~~[commission]~~ shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The ***authority*** ~~[commission]~~ may issue or renew a license unless the ***authority*** ~~[commission]~~ determines that:

(a) The track location, traffic flow, facilities for the public, and facilities for racing participants and horses do not meet state code or are otherwise inadequate to protect the public health and safety;

(b) The racing dates and times requested conflict with another race meeting of the same breed of horse;

(c) The financing or proposed financing of the entire operation is not adequate for the operation or is from an unsuitable source;

(d) The applicant or licensee has failed to disclose or has misstated information or otherwise attempted to mislead the ***authority***~~[commission]~~ with respect to any material fact contained in the application for the issuance or renewal of the license;

(e) The applicant has knowingly failed to comply with the provision of this chapter or any administrative regulations promulgated thereunder;

(f) Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been placed and remains in the custody of any federal, state, or local law enforcement authority;

5. Had a racing or gaming license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or

(g) The applicant or licensee has had a racing or gaming license denied or revoked in another jurisdiction on grounds that would be grounds for license denial or revocation in Kentucky.

Section 10. KRS 230.290 is amended to read as follows:

All licenses granted under this chapter:

(1) Shall be in writing;

(2) Shall be subject to all administrative regulations and conditions as may from time to time be prescribed by the ***authority***~~[commission]~~;

(3) Shall contain conditions as may be considered necessary or desirable by the ***authority***~~[commission]~~ for purposes of this chapter; and

(4) No license shall extend beyond the end of the calendar year for which it was issued, but the ***authority***~~[commission]~~ may renew any license and any renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to renewal and shall not prevent subsequent proceedings against the licensee therefor.

Section 11. KRS 230.300 is amended to read as follows:

(1) Any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky or to engage in simulcasting and intertrack wagering as a receiving track during any calendar year shall first apply to the ***authority***~~[commission]~~ for a license to do so. The application shall be filed at the ***authority's***~~[commission's]~~ general office on or before October 1 of the preceding year with respect to applications to conduct live horse race meetings, and with respect to intertrack wagering dates, and on forms prescribed by the ***authority***~~[commission]~~. The application shall include the following information:

(a) The full name and address of the person making application;

(b) The location of the place, track, or enclosure where the applicant proposes to conduct horse racing meetings;

(c) The dates on which the applicant intends to conduct horse racing, which shall be successive days unless authorized by the ***authority*** ~~[commission]~~;

(d) The proposed hours of each racing day and the number of races to be conducted;

(e) The names and addresses of all principals associated with the applicant or licensee;

(f) The type of organizational structure under which the applicant operates, i.e., partnership, trust, association, limited liability company, or corporation, and the address of the principal place of business of the organization;

(g) Any criminal activities in any jurisdiction for which any individual listed under paragraphs (a) and (e) has been arrested or indicted and the disposition of the charges, and any current or on-going criminal investigation of which any of these individuals is the subject; and

(h) Any other information that the ***authority*** ~~[commission]~~ by administrative regulation deems relevant and necessary to determine the fitness of the applicant to receive a license, including fingerprints of any individual listed under paragraphs (a) and (e), if necessary for proper identification of the individual or a determination of suitability to be associated with a licensed racing association.

(2) An application for license shall be accompanied by the following documents:

(a) For a new license applicant, a financial statement prepared and attested to by a certified public accountant in accordance with generally accepted accounting principles, showing the following;

1. The net worth of the applicant;

2. Any debts or financial obligations owed by the applicant and the persons to whom owed; and

3. The proposed or current financing structure for the operation and the sources of financing.

(b) For a license renewal applicant, an audited financial statement for the prior year;

(c) A copy of the applicant's federal and state tax return for the previous year. Tax returns submitted in accordance with this provision shall be treated as confidential;

(d) A statement from the Revenue Cabinet that there are no delinquent taxes or other financial obligations owed by the applicant to the state or any of its agencies or departments;

(e) A statement from the county treasurer of the county in which the applicant conducts or proposes to conduct horse racing meetings that there are no delinquent real or personal property taxes owed by the applicant.

(3) The completed application shall be signed by the applicant or the chief executive officer if the applicant is an organization, sworn under oath that the information is true, accurate, and complete, and the application shall be notarized.

(4) If there is any change in any information submitted in the application process, the applicant or licensee shall notify the ***authority*** ~~[commission]~~ within thirty (30) days of the change.

(5) The ***authority*** ~~[commission]~~ shall as soon as practicable, but in no event later than November 1 in any calendar year award dates for racing in the Commonwealth during the next year. In awarding dates, the ***authority*** ~~[commission]~~ shall consider and seek to preserve each track's usual and customary dates, as these dates are requested. If dates other than the usual and customary dates are requested, the applicant shall include a statement in its application setting forth the reasons the requested dates are sought. Dates for the conduct of intertrack wagering shall be awarded as provided in KRS 230.377. In the event scheduled racing is canceled by reason of flood, fire, inclement weather, or other natural disaster or emergency, the ***authority*** ~~[commission]~~ may award after November 1 additional racing dates to make up for those dates canceled.

(6) The ***authority*** ~~[commission]~~ may issue a license to conduct a horse race meeting to any association making the aforesaid application if the applicant meets the requirements established in KRS 138.530 and other applicable provisions of this chapter, and if the ***authority*** ~~[commission]~~ finds that the proposed conduct of racing by the association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth.

(7) As a condition precedent to the issuance of a license, the ***authority***~~[commission]~~ may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

(8) Every license issued under this chapter shall specify among other things the name of the person to whom issued, the address and location of the track where the horse race meeting to which it relates is to be held or conducted, and the days and hours of the day when the meeting will be permitted; provided, however, that no track that is granted overlapping dates for the conduct of a live race meeting with another horse racing track within a fifty (50) mile radius shall be permitted to have a post time after 5:30 p.m., prevailing time for overlapping days between July 1 and September 15, unless agreed to in writing by the tracks affected.

(9) A license issued under this section is neither transferable nor assignable and shall not permit the conduct of a horse race meeting at any track not specified therein. However, if the track specified becomes unsuitable for racing because of flood, fire, or other catastrophe, the ***authority***~~[commission]~~ may, upon application, authorize the meeting, or any remaining portion thereof, to be conducted at any other suitable track available for that purpose, provided that the owner of the track willingly consents to the use thereof.

(10) Horse racing dates may be awarded and licenses issued authorizing horse racing on any day of the year. Horse racing shall be held or conducted only between sunrise and midnight.

(11) The ***authority***~~[commission]~~ may at any time require the removal of any official or employee of any association in those instances where it has reason to believe that the official or employee has been guilty of any dishonest practice in connection with horse racing or has failed to comply with any condition of his license or has violated any law or any administrative regulation of this ***authority***~~[commission]~~.

(12) Every horse race not licensed under this section is hereby declared to be a public nuisance and the ***authority***~~[commission]~~ may obtain an injunction against the same in the Circuit Court of the county where the unlicensed race is proposed to take place.

Section 12. KRS 230.310 is amended to read as follows:

Every person not required to be licensed under KRS 230.300 who desires to participate in horse racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, shall first apply to the ***authority***~~[commission]~~ for a license to participate in the activity on association grounds during a race meeting. No person required to be licensed by this section may participate in any activity required to be licensed on association grounds during a race meeting without a valid license therefor. An applicant for a license shall submit to the ***authority***~~[commission]~~ fingerprints as may be required and other information necessary and reasonable for processing a license application. The ***authority***~~[commission]~~ is authorized to exchange fingerprint data with the Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of an applicant. The ***authority***~~[commission]~~ may issue a license if it finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof. A license shall be issued for the calendar year in which it is issued and may be renewed by the ***authority***~~[commission]~~. The license shall be valid at all horse race meetings in the Commonwealth during the period for which it is issued unless suspended or revoked under the administrative regulations promulgated by the ***authority***~~[commission]~~ under this chapter. With respect to horse owners and trainers, the ***authority***~~[commission]~~ may promulgate administrative regulations to facilitate and promote uniform, reciprocal licensing with other states.

Section 13. KRS 230.320 is amended to read as follows:

(1) Every license granted under this chapter is subject to denial, revocation, or suspension by the ***authority***~~[commission]~~ in any case where it has reason to believe that any provision of this chapter, administrative regulation, or condition of the ***authority***~~[commission]~~ affecting it has not been complied with or has been broken or violated. The ***authority***~~[commission]~~ in the interest of honesty and integrity of horse racing may promulgate administrative regulations under which any license may be denied, suspended, or revoked.

(2) Following an informal hearing by the stewards, any licensee alleged to have committed a violation under subsection (1) of this section may request a stay of imposition of the stewards' decision. Pending appeal, a

hearing on the request for stay shall be held within forty-eight (48) hours of the receipt of the request for a stay by the ***authority*** ~~[commission]~~. If the ***authority*** ~~[commission]~~ is not able to hold a hearing within forty-eight (48) hours, the stay shall be automatically granted. It shall be the policy of the ***authority*** ~~[commission]~~ to grant stays, unless:

(a) A licensee is alleged to have committed a flagrant violation of the duly-promulgated administrative regulations of racing which presents a clear and present danger to the immediate integrity of racing; and

(b) It is impossible for the ***authority*** ~~[commission]~~ to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours,

then the ***authority*** ~~[commission]~~ or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial stewards' determination of a violation.

(3) If any license is denied, suspended, or revoked after an informal hearing by the stewards or by the ***authority*** ~~[commission]~~ acting on a complaint or by its own volition, the ***authority*** ~~[commission]~~ shall grant the applicant or licensee the right to appeal the decision, and upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 14. KRS 230.330 is amended to read as follows:

Any licensee or any applicant aggrieved by any final order of the ***authority*** ~~[commission]~~ may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 15. KRS 230.350 is amended to read as follows:

(1) Any person licensed by this ***authority*** ~~[commission]~~ under KRS 230.300 may be issued a license by the Alcoholic Beverage Control Board and may hold a distilled spirits and wine special temporary license and malt beverage special temporary license as provided in KRS 243.260 and 243.290. The licenses, and each of them, when issued shall be valid and effective only upon premises licensed by this ***authority*** ~~[commission]~~ and upon the dates and hours for which racing or intertrack wagering has been authorized by this ***authority*** ~~[commission]~~. A temporary license may be issued for the period the racing or intertrack wagering has been authorized, even if the period exceeds the thirty (30) days as provided in KRS 243.260 and 243.290.

(2) Other provisions of the Kentucky Revised Statutes notwithstanding, in a county containing a city of the third or fourth class, a limited sale precinct election may be held in any precinct containing a licensed racing association. The election shall be conducted in the same manner as provided for in KRS 242.1292. Upon approval of the proposition, a license shall be issued in accordance with subsection (1) of this section. Nothing in this section shall be construed as authorizing the issuance of any alcoholic beverage licenses other than for the premises of a licensed racing association pursuant to KRS 243.260 and 243.290.

Section 16. KRS 230.361 is amended to read as follows:

(1) The ***authority*** ~~[commission]~~ shall promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering. The wagering shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises. The pari-mutuel system of wagering shall be operated only by a totalizator or other mechanical equipment approved by the ***authority*** ~~[commission]~~. The ***authority*** ~~[commission]~~ shall not require any particular make of equipment.

(2) The operation of a pari-mutuel system for betting where authorized by law shall not constitute grounds for the revocation or suspension of any license issued and held under KRS 230.350.

(3) All reported but unclaimed pari-mutuel winning tickets held in this state by any person or association operating a pari-mutuel or similar system of betting at horse race meetings shall be presumed abandoned if not claimed by the person entitled to them within one (1) year from the time the ticket became payable.

(4) The ***authority*** ~~[commission]~~ may issue a license to conduct pari-mutuel wagering on steeple chases or other racing over jumps; if all proceeds from the wagering, after expenses are deducted, is used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the ***authority*** ~~[commission]~~ shall not issue a license until it has received written approval from the affected track. Pari-mutuel wagering licensed and approved under this subsection shall be limited to four (4) days per year. All racing and wagering authorized by this subsection shall be conducted in accordance with applicable administrative regulations promulgated by the ***authority*** ~~[commission]~~.

Section 17. KRS 230.3615 is amended to read as follows:

(1) The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ and conducts the thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system, in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime, shall not be more than sixteen percent (16%) at the discretion of those tracks averaging over one million two hundred thousand dollars ($1,200,000) in on-track pari-mutuel handle per day of live racing conducted by the association. The commission at those tracks averaging one million two hundred thousand dollars ($1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association, at the discretion of such track, shall not be more than seventeen and one-half percent (17.5%) in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime.

(2) The commission at those tracks averaging over one million two hundred thousand dollars ($1,200,000) in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a race track under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed nineteen percent (19%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime. The commission, at those tracks averaging one million two hundred thousand dollars ($1,200,000) or less in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed twenty-two percent (22%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime.

(3) The minimum wager to be accepted by any licensed association may be one dollar ($1). The minimum pay-off on a one dollar ($1) wager shall be one dollar and ten cents ($1.10); but, in the event of a minus pool, the minimum pay-off for a one dollar ($1) wager shall be one dollar and five cents ($1.05).

(4) Each association conducting thoroughbred racing and averaging one million two hundred thousand dollars ($1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association shall pay to ***the authority all moneys allocated to*** the backside improvement fund ***in*** an amount equal to one-half of one percent (0.5%) of its on-track pari-mutuel wagers.

Section 18. KRS 230.362 is amended to read as follows:

Any person holding unclaimed pari-mutuel winning tickets presumed abandoned under the provisions of KRS 230.361 shall file annually, on or before September 1 of each year, with the office of the ***authority***~~[commission]~~ a list of and the amounts represented by unclaimed pari-mutuel tickets held by such person as of July 1, and other information as the ***authority***~~[commission]~~ may require for the administration of KRS 230.361 to 230.373. The report shall be made in duplicate; the original shall be retained by the ***authority***~~[commission]~~ and the copy shall be mailed to the sheriff of the county where the unclaimed pari-mutuel tickets are held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days a copy of the report on the courthouse door or the courthouse bulletin board, and to publish the copy in the manner set forth by KRS Chapter 424. The cost of the publication shall be paid by the ***authority***~~[commission]~~. The sheriff shall immediately certify in writing to the ***authority***~~[commission]~~ the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and such posting and publishing shall be constructive notice to all holders of pari-mutuel tickets which have remained unclaimed for a period of one (1) year from the time the ticket became payable.

Section 19. KRS 230.363 is amended to read as follows:

Any person who has made a report of unclaimed pari-mutuel tickets to the ***authority***~~[commission]~~ as required by KRS 230.362, shall between November 1 and November 15 of each year, turn over to the ***authority***~~[commission]~~ the sum represented by the unclaimed pari-mutuel tickets so reported; but if the person making the report or the owner of the unclaimed pari-mutuel ticket certifies to the ***authority***~~[commission]~~ by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist, or shall certify

existence of any fact or circumstance in which there is substantial evidence to rebut such presumption, then, the person reporting the unclaimed pari-mutuel tickets or holding the sum represented by the unclaimed pari-mutuel tickets as reported shall not be required to turn over said sum to the ***authority***~~[commission]~~ except upon order of court. If the holder of any unclaimed pari-mutuel ticket files an action in court claiming the sum which has been reported under the provisions of KRS 230.362, the person reporting or holding the sum represented by said unclaimed pari-mutuel ticket shall be under no duty while any such action is pending to turn over said sum to the ***authority***~~[commission]~~, but shall have the duty of notifying the ***authority***~~[commission]~~ of the pendency of such action.

Section 20. KRS 230.364 is amended to read as follows:

Any person holding an unclaimed pari-mutuel ticket or any person holding the sum represented by an unclaimed pari-mutuel ticket, or any claimant thereto shall have the right to a judicial determination of his rights under KRS 230.361 to 230.373 and nothing therein shall be construed otherwise; and the ***authority***~~[commission]~~ may institute an action to recover the sum represented by the unclaimed pari-mutuel tickets which are presumed abandoned whether said sum has been reported or not and may include in one (1) petition the sum represented by all the unclaimed pari-mutuel tickets as defined herein within the jurisdiction of the court in which the action is brought.

Section 21. KRS 230.365 is amended to read as follows:

Any person who pays the sum represented by the unclaimed pari-mutuel tickets to the ***authority***~~[commission]~~ under KRS 230.363 is relieved of all liability for the value of said unclaimed pari-mutuel tickets for any claim made in respect of said unclaimed pari-mutuel tickets.

Section 22. KRS 230.366 is amended to read as follows:

Any person claiming an interest in any unclaimed pari-mutuel ticket which has been paid or surrendered to the ***authority***~~[commission]~~ in accordance with KRS 230.361 to 230.373 may file his claim to it at any time after it was paid to the ***authority***~~[commission]~~.

Section 23. KRS 230.367 is amended to read as follows:

The ***authority***~~[commission]~~ shall consider any claim or defense permitted to be filed before the ***authority***~~[commission]~~ and hear the evidence concerning it. If the claimant establishes his claim, the ***authority***~~[commission]~~ shall, when the time for appeal or other legal procedure has expired, authorize payment to him of a sum equal to the amount of his claim paid to the ***authority***~~[commission]~~ in accordance with KRS 230.361 to 230.373. The decision shall be in writing and shall state the substance of the evidence heard by the ***authority***~~[commission]~~, if a transcript is not kept. The decision shall be a matter of public record.

Section 24. KRS 230.368 is amended to read as follows:

Any person dissatisfied with the decision of the ***authority, under Section 23 of this Act***~~[commission in this regard]~~ may appeal to the Franklin Circuit Court in accordance with the provisions of KRS 243.560 to 243.590.

Section 25. KRS 230.369 is amended to read as follows:

The ***authority***~~[commission]~~, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report unclaimed pari-mutuel tickets.

Section 26. KRS 230.370 is amended to read as follows:

The ***authority***~~[commission]~~ may promulgate any reasonable and necessary administrative regulation for the enforcement of ***the***~~[these]~~ provisions ***of this chapter*** and ***the conduct of*** hearings held before it.

Section 27. KRS 230.371 is amended to read as follows:

The ***authority***~~[commission]~~ may require the production of reports or the surrender of sums represented by unclaimed pari-mutuel tickets as provided in KRS 230.361 to 230.373 by civil equity action, including, but not limited to, an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent (10%) of all amounts that he is ultimately required to surrender. The ***authority***~~[commission]~~ shall follow the procedures provided by the Rules of Civil Procedure.

Section 28. KRS 230.372 is amended to read as follows:

Any payments made to any persons claiming an interest in an unclaimed pari-mutuel ticket, and any necessary expense including, but not limited to, administrative costs, advertising costs, court costs and attorney's fees, required

to be paid by the ***authority*** ~~[commission]~~ in administering or enforcing the provisions of KRS 230.361 to 230.373 shall be deducted from sums received by the ***authority*** ~~[commission]~~ prior to payment to the Kentucky Racing Health and Welfare Fund.

Section 29. KRS 230.374 is amended to read as follows:

All sums reported and paid to the ***authority*** ~~[commission]~~ under the provisions of KRS 230.361 to 230.373, with the exception of funds paid under KRS 230.398, shall be paid by the ***authority*** ~~[commission]~~ to the Kentucky Racing Health and Welfare Fund, Inc., a nonprofit charitable corporation, organized for the benefit, aid, assistance, and relief of thoroughbred owners, trainers, jockeys, valets, exercise riders, grooms, stable attendants, pari-mutuel clerks, and other thoroughbred racing personnel employed in connection with racing, and their spouses and children, who can demonstrate their need for financial assistance connected with death, illness, or off-the-job injury and are not otherwise covered by union health and welfare plans, workers' compensation, Social Security, public welfare, or any type of health, medical, death, or accident insurance. These sums shall be paid on or before December 31 in each year, however, no payments shall be made by the ***authority*** ~~[commission]~~ to the Kentucky Racing Health and Welfare Fund, Inc., unless the ***authority*** ~~[commission]~~ and the Auditor of Public Accounts are satisfied that the fund is in all respects being operated for the charitable and benevolent purposes as set forth in this section and that no part of the funds paid to the fund by the ***authority*** ~~[commission]~~ or any net earnings of the fund inure to the benefit of any private individual, director, officer, or member of the fund or any of the persons who turned over sums to the ***authority*** ~~[commission]~~ representing unclaimed pari-mutuel tickets.

Section 30. KRS 230.375 is amended to read as follows:

(1) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., may create and fund the Kentucky Race Track Retirement Plan. The board shall use no more than twenty-five percent (25%) of the annual sum paid by the ***authority*** ~~[commission]~~ under KRS 230.361 to 230.373 to fund the plan.

(2) The plan shall be provided for the benefit of thoroughbred trainers, assistant trainers, exercise riders, grooms, stable attendants, and other stable employees who can demonstrate that they are not otherwise eligible to participate in any other private or public, nonself-funded retirement or pension plan.

(3) The Kentucky Race Track Retirement Plan shall be administered by the board of directors of the Kentucky Racing Health and Welfare Fund, Inc., for the charitable and benevolent purposes set forth in KRS 230.374, and no part of the sums administered by the fund for the plan or any net earnings of the plan shall inure to the benefit of any private individual, director, officer, or member of the fund, or any of the persons who paid sums to the ***authority*** ~~[commission]~~ under the provisions of KRS 230.361 to 230.373.

(4) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., shall be the trustee of the plan's funds and shall have full power to invest and reinvest funds. Investments shall be diversified to balance the risks associated with various investment options to maintain the long-term solvency of the plan. The board shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the investments in which any of the plan's funds have been invested, as well as of the proceeds of investments belonging to the plan. The board members or any investment manager shall discharge their duties with respect to the assets of the plan solely in the interest of the plan's members and:

   (a) For the exclusive purposes of providing benefits to plan members and their beneficiaries and defraying reasonable expenses of administering the plan;

   (b) With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and

   (c) In accordance with any other laws or instruments governing the administration of the plan's funds.

Section 31. KRS 230.3751 is amended to read as follows:

The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States, legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSES

SECTION 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the pari-mutuel racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live racing with pari-mutuel wagering.

3. Authorize the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ to participate in this compact.

4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

ARTICLE II

DEFINITIONS

SECTION 2. Definitions.

"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

"Participants in live racing" means participants in live racing with pari-mutuel wagering in the party states.

"Party state" means each state that has enacted this compact.

"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III

ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL

SECTION 3. Entry into force.

This compact shall come into force when enacted by any four (4) states. Thereafter, this compact shall become effective as to any other state upon both (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in Section 8.

SECTION 4. States eligible to join compact.

Any state that has adopted or authorized live racing with pari-mutuel wagering shall be eligible to become party to this compact.

SECTION 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three (3) party states, this compact no longer shall be in force and effect unless and until there are at least three (3) or more party states again participating in this compact.

ARTICLE IV

COMPACT COMMITTEE

SECTION 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the "compact committee," which shall be comprised of one (1) official from the racing commission or its equivalent in each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his state shall designate another of its members as an alternate who shall serve in his place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

SECTION 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live horse racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, and which categories of equivalent participants in dog racing and other forms of live racing with pari-mutuel wagering authorized in two (2) or more of the party states, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 above. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.

3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.

4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.

5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.

7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or renewal of a license.

9. Receive other funds through gifts, grants and appropriations.

SECTION 8. Voting requirements.

A. Each official shall be entitled to one (1) vote on the compact committee.

B. All action taken by the compact committee with regard to the addition of party states as provided in Section 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.

C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

SECTION 9. Administration and management.

A. The compact committee shall elect annually from among its members a chairman, a vice chairman, and a secretary/treasurer.

B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds (2/3) vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the Secretary of State or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.

D. Employees of the compact committee shall be considered governmental employees.

SECTION 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE

SECTION 11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements, and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.

2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of Section 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of nonracing employees at pari-mutuel racetracks and employees to separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI

CONSTRUCTION AND SEVERABILITY

SECTION 12. Construction and severability.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable, and, if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some portion of this compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Section 32. KRS 230.377 is amended to read as follows:

(1) Other provisions of the Kentucky Revised Statutes notwithstanding, a track may apply to the ***authority*** ~~[commission]~~ for simulcasting and intertrack wagering dates. Applications shall be submitted in accordance with KRS 230.300. The ***authority*** ~~[commission]~~ shall not approve the establishment or relocation of a receiving track within a radius of seventy-five (75) miles of a race track duly licensed as of July 15, 1992, without the prior written consent of the licensed track within whose seventy-five (75) mile radius the new receiving track would be located.

(2) On or before November 1 of each year, the ***authority*** ~~[commission]~~ shall meet and award intertrack wagering dates to all tracks for the entire succeeding calendar year. In a geographic area containing more than one (1) track within a fifty (50) mile radius of another track, intertrack wagering, except for quarter horse racing, shall be limited to simulcasting and wagering on racing of the same breed of horse as the receiving track was licensed to race on or before July 15, 1998.

(3) The ***authority*** ~~[commission]~~ shall approve no more than nine (9) tracks for participation in horse racing, intertrack wagering, and simulcasting. Any approval by the ***authority*** ~~[commission]~~ of a change in location of these tracks shall be subject to the local-approval process contained in KRS 230.380.

(4) A track may by administrative regulation be required to simulcast its races to one (1) or more receiving tracks approved for simulcasting and intertrack wagering, as a prerequisite for the issuance of a license pursuant to KRS 230.300, provided that:

(a) Each track shall be permitted to exempt one (1) day of racing from simulcasting to both receiving tracks and simulcast facilities, at its discretion;

(b) Tracks in a county containing a city of the first class or a consolidated local government and tracks in an urban-county government shall not be required to simulcast to each other or to any other facility in those counties. This provision shall not be construed as requiring tracks within the same county to simulcast to each other; and

(c) In the absence of a contract between a host track and a receiving track, the commission shall be split as provided for in KRS 230.378(3).

(5) A track may receive simulcasts and conduct interstate wagering thereon subject to the following limitations which shall be in addition to the limitations set forth in KRS 230.3771:

(a) A track licensed to conduct thoroughbred racing may receive simulcasts and conduct interstate wagering on all thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., without further consents or approvals.

(b) A track licensed to conduct harness racing may receive simulcasts and conduct interstate wagering on all harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars ($75,000) without further consents or approvals.

(c) A track licensed to conduct quarter horse racing may receive simulcasts and conduct interstate wagering on all quarter horse races designated as graded stakes races by the graded stakes committee of the American Quarter Horse Association, without further consents or approvals.

(d) A track which applies to the ***authority*** ~~[commission]~~ to receive an interstate race of a different breed than the breed for which it is licensed by the ***authority*** ~~[commission]~~ shall receive any simulcast of an interstate race through the intertrack wagering system upon approval by the ***authority*** ~~[commission]~~. Notwithstanding the foregoing, a track licensed to conduct horse racing may receive simulcasts and conduct interstate wagering on quarter horse races, subject to the limitations of KRS 230.3771.

(e) A track may receive simulcasts of special event races conducted in other states or foreign countries which are determined by the ***authority*** ~~[commission]~~ to be of sufficient national or international significance or interest to warrant interstate wagering and if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., the Kentucky Division of the Horseman's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association for harness racing, and any track conducting live horse races of the same breed at the same time as the simulcast race.

(f) A track may also receive simulcasts and conduct interstate wagering on thoroughbred horse races other than those described in paragraphs (a) and (e) of this subsection if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., and the Kentucky Horsemen's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association, or its successor, for harness racing.

(g) The consent required by paragraph (f) of this subsection or by subsections (1)(g) and (2)(g) of KRS 230.3771 shall not be withheld:

1. For any reason not specifically related to financial harm to live horse racing; or

2. As a condition to the granting of any contractual or other concession not specifically related to the effects of interstate simulcasting on live horse racing in this Commonwealth, taken as a whole.

(h) A host track located in this state may receive simulcasting of not more than two (2) full cards of racing from another state, if both tracks race horses of the same breed and if:

1. The race date was previously granted by the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ to conduct live racing at the track located in this state;

2. Live racing was canceled due to weather conditions; and

3. The consent required by paragraph (e) of this subsection is obtained.

(i) The in-state track receiving the simulcast specified in paragraph (h) of this subsection shall offer that simulcast to all participating tracks and simulcast facilities in the intertrack wagering system.

(j) All interstate simulcasting shall be conducted in accordance with applicable federal laws.

(6) The ***authority*** ~~[commission]~~ may promulgate necessary and reasonable administrative regulations for the purpose of administering the conduct of intertrack or interstate wagering and regulating the conditions under which wagering shall be held and conducted. Administrative regulations shall provide for the prevention of practices detrimental to the public interest and to impose penalties for violations. All administrative regulations shall be in conformity with the provisions of KRS Chapter 13A, KRS 138.510, and this chapter.

~~[(7) Subsections (2) and (3) of this section shall apply only to intertrack wagering dates awarded for calendar year 1993 and thereafter, and any unresolved intertrack wagering dates for calendar year 1992 shall be awarded pursuant to applicable provisions of law in effect immediately prior to March 30, 1992.]~~

Section 33. KRS 230.3771 is amended to read as follows:

(1) A thoroughbred track licensed to conduct thoroughbred racing may receive interstate simulcasts of thoroughbred horse races and quarter horse races, and conduct interstate wagering thereon, subject to the following limitations:

(a) A thoroughbred receiving track may receive interstate simulcasts of thoroughbred races and conduct interstate wagering thereon at any time of day and during any live thoroughbred horse race meet conducted in the Commonwealth of Kentucky so long as the thoroughbred receiving track conducting interstate wagering remits to the thoroughbred host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.

(b) A thoroughbred host track which receives interstate simulcasts and conducts interstate wagering thereon during the period of time from the first awarded day of its live meet through the last awarded day of its live meet shall offer the simulcasts to all thoroughbred receiving tracks, all harness tracks not subject to the provisions of KRS 230.377(2), and all simulcast facilities through the intertrack wagering system.

(c) Except as otherwise prohibited by law, a receiving track shall conduct intertrack wagering on all live races of all thoroughbred host tracks on any day on which it receives an interstate simulcast for the purpose of conducting interstate wagering.

(d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.

(e) If more than one (1) thoroughbred track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast of thoroughbred races unless all thoroughbred tracks conducting live racing at the same time of day agree upon all interstate simulcasts to be received and the division of the thoroughbred host track's commission. If more than one (1) thoroughbred track conducts live racing at different times on the same day, the thoroughbred host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and concludes ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.

(f) Each thoroughbred track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the ***authority*** ~~[commission]~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.

(g) Notwithstanding paragraph (f) of this subsection, any thoroughbred track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Horsemen's Benevolent and Protective Association and the Kentucky Thoroughbred Owners and Breeders Association, Inc.

(h) A separate accounting on all interstate simulcasting shall be submitted to the ***authority*** ~~[commission]~~. The accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.

(i) If the only simulcast or simulcasts a track participating as a host track makes available for interstate wagering through this state's intertrack wagering system on any race day are thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a thoroughbred host

track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.

(j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:

1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;

2. Twenty-five percent (25%) to the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;

3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and

4. Twenty-five percent (25%) to the purse program of the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, then an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.

(k) A simulcast facility's commission on interstate wagering on thoroughbred racing, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).

(2) A harness track licensed to conduct harness racing may receive interstate simulcasts of harness horse races and conduct interstate wagering thereon subject to the following limitations:

(a) A harness receiving track may receive interstate simulcasts of harness races and quarter horse races, and conduct interstate wagering thereon at any time of day and during the course of any live harness horse race meet conducted in the Commonwealth of Kentucky so long as the harness receiving track conducting interstate wagering remits to the harness host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.

(b) A harness host track which receives an interstate simulcast and conducts interstate wagering thereon during its live race meet shall offer the simulcasts to all thoroughbred receiving tracks not subject to the provisions of KRS 230.377(2), all harness tracks, and all simulcast facilities through the intertrack wagering system.

(c) Except as otherwise prohibited by law, a harness receiving track or a simulcast facility shall conduct intertrack wagering on all live races of a harness host track on any day it receives an interstate simulcast from a harness host track.

(d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.

(e) If more than one (1) harness track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast on harness races unless all harness tracks conducting live racing at that time of day agree upon the interstate simulcast to be received and the division of the harness host track's commission. If more than one (1) harness track conducts live racing at different times on the same day, the harness host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and conclude ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.

(f) Each harness track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the ***authority*** ~~[commission]~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.

(g) Notwithstanding paragraph (f) of this subsection, any harness track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Harness Horsemen's Association, or its successor.

(h) A separate accounting on all interstate simulcasting shall be submitted to the ***authority*** ~~[commission]~~. This accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.

(i) If the only simulcast or simulcasts a track participating as a harness host track makes available for interstate wagering through this state's intertrack wagering system on any race day are harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars ($75,000), then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a harness host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.

(j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:

1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;

2. Twenty-five percent (25%) to the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;

3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and

4. Twenty-five percent (25%) to the purse program of the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.

(k) A simulcast facility's commission on interstate wagering on harness races, after deduction of applicable taxes and any amount required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).

(3) A harness track may only receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon as provided in subsection (1)(b) of this section. A thoroughbred track may only receive interstate simulcasts of harness horse races and conduct interstate wagering thereon as provided in subsection (2)(b) of this section. A simulcast facility may only receive interstate simulcasts of thoroughbred and harness horse races and conduct interstate wagering thereon as provided in subsections (1)(b) and (2)(b) of this section.

(4) (a) A thoroughbred track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraph (b) of this subsection.

(b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:

1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;

2. Twenty-five percent (25%) to the host track; and

3. Fifty percent (50%) to the quarter horse purse program within this state, to be allocated by the American Quarter Horse Association or its successor to supplement purses for quarter horse races in this state.

(5) (a) A harness track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraphs (b) and (c) of this subsection.

(b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:

1. Twenty-five percent (25%) to the purse program of the receiving track;

2. Twenty-five percent (25%) to the purse program of the host track;

3. Twenty-five percent (25%) to the receiving track; and

4. Twenty-five percent (25%) to the host track.

(c) When a quarter horse race is run at a Kentucky race track, the commission to the Kentucky Quarter Horse Purse Program shall be twenty-two percent (22%) from the host track's purse share.

(6) Other provisions of the Kentucky Revised Statutes notwithstanding, any track in a geographic area that contains more than one (1) track within a fifty (50) mile radius of any other track may only receive interstate simulcasts on racing of the same breed of horse as the track was licensed to race on or before July 15, 1998, except any track may receive interstate simulcasts on quarter horse races.

Section 34. KRS 230.3773 is amended to read as follows:

(1) As used in this section, "interstate common wagering pool" means a pari-mutuel pool established in one (1) horse racing jurisdiction that is combined with comparable pari-mutuel pools from at least one (1) horse racing jurisdiction for the purpose of establishing payoff prices in the various jurisdictions.

(2) Interstate wagers at a receiving track may form an interstate common wagering pool with wagers at a track in another jurisdiction, and the receiving track may adopt the commission and breakage rates of the track at which the race is being run. The ***authority*** ~~[commission]~~ may also approve types of wagering, distribution of winnings, and rules of racing for interstate common wagering pools that are different from those that normally apply in Kentucky.

(3) Wagers placed on any races run at track in Kentucky may be combined with wagers placed at tracks in other jurisdictions to form an interstate common wagering pool located either within or outside Kentucky.

(4) A track's participation in an interstate common wagering pool does not cause that track to be considered to be doing business in any jurisdiction other than the jurisdiction where the track is physically located. Excise taxes and commission rates may not be imposed on any interstate common wagering pool other than on amounts actually wagered in Kentucky. The combination of pari-mutuel pools as provided in this section constitutes the communication of wagering information for purposes of calculating odds and payoffs only and does not constitute the transfer of wagers in interstate commerce.

Section 35. KRS 230.378 is amended to read as follows:

(1) A receiving track may accept wagers only at the track where it is licensed to conduct its race meeting or conduct intertrack wagering. A receiving track may accept wagers through a telephone account wagering system. Wagers at a receiving track, simulcast facility, or on telephone account wagering shall form a common pool with wagers at a host track. This common pool requirement shall not apply to wagers made in connection with interstate simulcasting pursuant to KRS 230.3771; however, common pools shall be encouraged.

(2) Except as provided in KRS 230.3771(2), the commission of a receiving track, simulcast facility, or on telephone account wagering shall be the same as the commission of the host track as determined in KRS 230.3615 or 230.750.

(3) In the absence of a valid contract with a horsemen's organization, the commission of a receiving track, after deduction of applicable taxes and other applicable deductions, shall be split as follows: twenty-two percent (22%) to the host track, twenty-two percent (22%) to the purse program at the host track, twenty-two percent (22%) to the receiving track and twenty-two percent (22%) to the purse program at the receiving track. Twelve percent (12%) of the commission shall be allocated evenly between the host track and the receiving track to cover the cost of simulcasting, unless otherwise agreed to by contract.

(4) The deduction for the backside improvement fund, as provided for in KRS 230.3615(4) shall not apply to the commission or pari-mutuel tax of a receiving track or telephone account wagering.

(5) A receiving track shall be exempt from the admissions tax levied in KRS 138.480 and from any license fee imposed by statute or regulation by the ***authority*** ~~[commission]~~.

Section 36. KRS 230.379 is amended to read as follows:

(1) A track may engage in telephone account wagering, if all moneys used to place telephone account wagers are on deposit in an amount sufficient to cover the wagers at the track where the account is opened. All moneys wagered by telephone account wagering shall be subject to the applicable pari-mutuel tax levied in KRS 138.510 and shall form a common pool with other pari-mutuel pools at the track for each posted race. The ***authority*** ~~[commission]~~ shall have authority to promulgate necessary and reasonable administrative regulations to regulate the conduct of telephone account wagering, including regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer.

(2) A track shall accept and tabulate a telephone account wager only from the holder of a telephone wagering account. No person shall directly or indirectly act as an intermediary, transmitter, or agent in the placing of wagers for a holder of a telephone wagering account. No person shall in any manner place a wager through telephone account wagering, on behalf of a holder of a telephone wagering account. Only the holder of a telephone wagering account shall place a telephone wager. Any person violating this subsection shall be guilty of a Class A misdemeanor.

(3) Telephone account wagering conducted in accordance with the provisions of this section shall not be considered a violation of KRS 528.110.

Section 37. KRS 230.380 is amended to read as follows:

(1) Any track licensed by the ***authority*** ~~[commission]~~ to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the ***authority*** ~~[commission]~~ for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the ***authority*** ~~[commission]~~ shall notify by regular mail, each state senator, state representative, county judge/executive, and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the ***authority*** ~~[commission]~~ meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated under KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.

(2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the ***authority*** ~~[commission]~~ approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.

(3) The ***authority*** ~~[commission]~~ shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The ***authority*** ~~[commission]~~ may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.

(4) The ***authority*** ~~[commission]~~ may promulgate administrative regulations as it deems appropriate to protect the integrity of pari-mutuel wagering at any simulcast facility.

(5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the ***authority*** ~~[commission]~~, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the ***authority*** ~~[commission]~~.

(6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.

(7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed under KRS 137.170, or any admission tax imposed under KRS 138.480.

(8) One percent (1%) of all moneys wagered at a simulcast facility shall be dedicated for local economic development and shall be allocated as follows:

(a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.

(b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.

(9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed under KRS 230.3615 with respect to all wagers made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:

1. Thirty percent (30%) shall be allocated to the host track;

2. Forty-six and one-half percent (46.5%) to the purse program at the host track;

3. Thirteen and one-half percent (13.5%) to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;

4. Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc., to be expended as follows:

a. Up to three percent (3%) for capital improvements and promotion of off-track betting; and

b. The remainder for marketing and promoting the Kentucky thoroughbred industry; and

5. Four percent (4%) to be allocated to the ***authority***~~[commission]~~ to be used for purses at county fairs in Kentucky licensed and approved by the ***authority***~~[commission]~~, and for the standardbred sires stakes program established under KRS 230.770.

(b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.

(c) The Kentucky Thoroughbred Owners and Breeders, Inc., shall annually report to the ***authority***~~[commission]~~ on all money expended in accordance with subsection (9)(a)4. of this section. The report shall be in the form required, and provide all information required by the ***authority***~~[commission]~~.

(10) Subsections (1) and (2) of this section shall also apply to the establishment by a track of a noncontiguous facility in a county in which pari-mutuel racing and wagering is not being conducted. Subsection (8) of this section shall also apply to a noncontiguous race track facility referenced in this subsection, unless there is a written agreement to the contrary between the track establishing the facility and the governing body of the local government jurisdiction in which the facility is to be established.

Section 38. KRS 230.398 is amended to read as follows:

All sums reported and paid to the ***authority***~~[commission]~~ under the provisions of KRS 230.361 to 230.373 by any licensee conducting a harness race meeting shall be used by it for purses at harness racing events at county fairs within the Commonwealth of Kentucky that have been licensed and approved by it. The ***authority***~~[commission]~~ shall have the authority to promulgate administrative regulations as may be necessary for the conduct of these races.

Section 39. KRS 230.400 is amended to read as follows:

(1) There is hereby created a trust and revolving fund for the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, designated as the Kentucky thoroughbred development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with other money contributed to or allocated to the fund from all other sources. Money to the credit of the Kentucky thoroughbred development fund shall be distributed by the Treasurer for the purposes of this section upon authorization of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money from the Kentucky thoroughbred development fund shall be allocated to each

licensed association in an amount equal to the amount the association contributed to the fund. Money to the credit of the Kentucky thoroughbred development fund at the end of each fiscal year shall not lapse, but shall be carried forward in such fund to the succeeding fiscal year.

(2) There is hereby established, under the general jurisdiction of the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~, a Kentucky Thoroughbred Development Fund Advisory Committee. The advisory committee shall consist of five (5) members, all of whom shall be residents of Kentucky, to be appointed by the chairman of the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ by July 1 of each year. The committee shall consist of two (2) thoroughbred breeders recommended by the Kentucky Thoroughbred Owners and Breeders, Inc.; one (1) thoroughbred owner recommended by the Kentucky division of the Horsemen's Benevolent and Protective Association; one (1) officer or director of a licensed association conducting thoroughbred racing in Kentucky, recommended by action of all of the licensed associations conducting thoroughbred racing in Kentucky; and one (1) member of the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~. If any member other than the ***authority*** ~~[commission]~~ member has not been recommended for appointment by July 1 of each year, the chairman of the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ shall make an appointment for the organization or organizations failing to recommend a member of the committee. The members of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select from its membership annually a chairman and a vice chairman.

(3) (a) The Kentucky Thoroughbred Development Fund Committee shall advise and assist the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ in the development of the supplemental purse program provided herein for Kentucky bred thoroughbreds, shall make recommendations to the ***authority*** ~~[commission]~~ from time to time with respect to the establishment of guidelines, administrative regulations for the provision of supplemental purses, the amount thereof, the races for which the purses are to be provided and the conditions thereof, manner and method of payment of supplemental purses, registry of thoroughbred stallions standing within the Commonwealth of Kentucky, registry of Kentucky bred thoroughbreds for purposes of this section, nature and type of forms and reports to be employed and required in connection with the establishment, provision for, award and payment of supplemental purses, and with respect to all other matters necessary in connection with the carrying out of the intent and purposes of this section.

(b) The ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ shall employ qualified personnel as may be required to assist the ***authority*** ~~[commission]~~ and the advisory committee in carrying out the provisions of this section. These persons shall serve at the pleasure of the ***authority*** ~~[commission]~~ and compensation for these personnel shall be fixed by the ***authority*** ~~[commission]~~. The compensation of these personnel and the necessary expenses incurred by the ***authority*** ~~[commission]~~ or by the committee in carrying out the provisions of this section shall be paid out of the Kentucky thoroughbred development fund.

(4) The ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~, with the advice and assistance of the Kentucky Thoroughbred Development Fund Advisory Committee, shall use the Kentucky thoroughbred development fund to promote, enhance, improve, and encourage the further and continued development of the thoroughbred breeding industry in Kentucky by providing, out of the Kentucky thoroughbred development fund, supplemental purses for designated stakes, handicap, allowance, and nonclaiming maiden races contested at licensed thoroughbred race meetings in Kentucky, the awarding and payment of which supplemental purses shall be conditioned upon the winning or placing in designated races by Kentucky bred thoroughbred horses. Any supplemental purse provided for a designated race shall be apportioned among the winning and placing horses in the same proportion as the stake or purse provided for the race by the racing association. Winning or placing as used in this section shall include those horses finishing first, second, third, and fourth in the races. That portion of the supplemental purse provided for any designated race for a winning or placing finish shall be awarded and paid to the owner of the horse so finishing only if the horse is a Kentucky bred thoroughbred duly registered with the official registrar. Any portion of the supplemental purse which is not awarded and paid over shall be returned to the Kentucky thoroughbred development fund.

(5) (a) For purposes of this section, the term Kentucky thoroughbred stallion shall mean and include only a thoroughbred stallion standing the entire breeding season in Kentucky and registered as a Kentucky thoroughbred stallion with the official registrar of the Kentucky thoroughbred development fund.

(b) Except for thoroughbred horses foaled prior to January 1, 1980, the term Kentucky bred thoroughbreds for purposes of this section, shall mean and include only thoroughbred horses sired by Kentucky thoroughbred stallions foaled in Kentucky and registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.

(c) Any thoroughbred horse foaled prior to January 1, 1980, may qualify as a Kentucky bred thoroughbred for purposes of this section if the horse was foaled in Kentucky and if the sire of the thoroughbred was standing at stud within Kentucky at the time of conception of such thoroughbred, provided the thoroughbred is duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.

(d) In order for an owner of a Kentucky sired thoroughbred to be eligible to demand, claim, and receive a portion of a supplemental purse provided by the Kentucky thoroughbred development fund, the thoroughbred horse winning or placing in a designated race for which a supplemental purse has been provided by the Kentucky thoroughbred development fund must have been duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund prior to entry in the race.

(6) (a) Kentucky Thoroughbred Owners and Breeders, Inc., is hereby recognized and designated as the sole official registrar of the Kentucky thoroughbred development fund for the purposes of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accord with the terms of this section and any administrative regulations promulgated by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~. When a Kentucky bred thoroughbred is registered with the official registrar, the registrar shall be authorized to stamp the Jockey Club certificate issued for the thoroughbred with the seal of the registrar, certifying that the thoroughbred is a duly qualified and registered Kentucky bred thoroughbred for purposes of this section. The registrar may establish and charge, with the approval of the ***authority***~~[commission]~~, reasonable registration fees for its services in the registration of Kentucky thoroughbred stallions and in the registration of Kentucky bred thoroughbreds. Registration records of the registrar shall be public records and open to public inspection at all normal business hours and times.

(b) Any interested party aggrieved by the failure or refusal of the official registrar to register a stallion or thoroughbred as a Kentucky stallion or as a Kentucky bred thoroughbred shall have the right to file with the ***authority***~~[commission]~~, within thirty (30) days of such failure or refusal of the registrar, petition seeking registration of the thoroughbred. The ***authority***~~[commission]~~ shall promptly hear the matter de novo and issue its order directing the official registrar to register or not to register as it may be determined by the ***authority***~~[commission]~~.

(7) The ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar, and shall administer the Kentucky bred thoroughbred program created hereby in a manner best designed to promote and aid in the further development of the thoroughbred breeding industry in Kentucky, to upgrade the quality of thoroughbred racing in Kentucky, and to improve the quality of thoroughbred horses bred in Kentucky.

Section 40. KRS 230.770 is amended to read as follows:

(1) There is hereby created a trust and revolving fund for the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, designated as the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with any other money contributed to or allocated to the fund from all other sources. For the purposes of this section, "development fund" or "fund" means the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. Money to the credit of the development fund shall be distributed by the Treasurer for the purposes provided in this section, upon authorization of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money to the credit of the fund at the end of each fiscal year shall not lapse, but shall be carried forward in the fund to the succeeding fiscal year.

(2) The ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ shall use the development fund to promote races, and to provide purses for races, for horses sired by stallions standing within the Commonwealth of Kentucky or as provided in subsection (2)(b) of this section. For purposes of this section, the term stallions

standing within the Commonwealth of Kentucky shall include only stallions standing the entire breeding season within the Commonwealth of Kentucky and registered with the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~.

(a) The ***authority*** ~~[commission]~~ shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed standardbred race tracks within Kentucky on an equitable basis, for the purpose of conducting separate races for two and three year old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within the Commonwealth of Kentucky at the time of conception. Notwithstanding other provisions hereof, a filly or colt foaled prior to January 1, 1978, shall be eligible to participate in races, a part of the purse for which is provided by money of the development fund, if the sire of the filly or colt was standing at stud within the Commonwealth of Kentucky at the time of conception.

(b) The ***authority*** ~~[commission]~~ shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed racetracks within Kentucky conducting quarter horse, Appaloosa, or Arabian racing, on an equitable basis as determined by the ***authority*** ~~[commission]~~.

(3) Money distributed from the development fund to licensed standardbred race tracks within the Commonwealth shall be used exclusively to promote races and provide purses for races conditioned to admit only standardbred colts and fillies sired by standardbred stallions standing within the Commonwealth of Kentucky.

(4) The ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ shall fix the amount of money to be paid from the development fund to be added to the purse provided for each race by the licensed operator of the race track; shall fix the dates and conditions of races to be held by licensed race tracks; and shall promulgate administrative regulations necessary to carry out the provisions of this section. Money from the fund shall be allocated to each breed of horse represented in the fund in an amount equal to the amount the breed has contributed to the fund.

(5) The ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ may promulgate administrative regulations necessary to determine the eligibility of horses for entry in races for which a portion of the purse is provided by money of the development fund, including administrative regulations for the registration of stallions standing within Kentucky and progeny thereof, including registration of progeny of the stallions foaled prior to June 19, 1976.

(6) The ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ shall appoint qualified personnel necessary to supervise registration of, or determination of eligibility of, horses entitled to entry in races, a portion of the purse of which is provided by the development fund, to assist the ***authority*** ~~[commission]~~ in determining the conditions, class, and quality of the fund supported race program to be established hereunder so as to carry out the purposes of this section. These persons shall serve at the pleasure of the ***authority*** ~~[commission]~~ and compensation shall be fixed by the ***authority*** ~~[commission]~~. The compensation of personnel and necessary expenses shall be paid out of the development fund. The ***authority*** ~~[commission]~~ shall promulgate administrative regulations to carry out the provisions of this section, and shall administer the Kentucky sire stakes program created hereby in a manner best designed to promote and aid in the development of the horse industry in Kentucky; to upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky.

Section 41. KRS 230.218 is amended to read as follows:

(1) There is established, under the ***jurisdiction of the Kentucky Horse Racing Authority, the backside improvement fund. This*** ~~[general jurisdiction of the Kentucky Racing Commission, a Backside Improvement Commission. This commission shall consist of four (4) members, three (3) of which shall be voting members and one (1) shall be a nonvoting member. The voting members shall be as follows: one (1) member appointed by the President of the Kentucky Senate, one (1) member appointed by the Speaker of the Kentucky House of Representatives, and one (1) member appointed by the chairman of the Kentucky Racing Commission. The nonvoting member shall be appointed by the Kentucky division of the Horsemen's Benevolent and Protective Association. The appointee of the chairman of the Kentucky Racing Commission shall serve as chairman of the Backside Improvement Commission. The members of the commission shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business.~~

~~(2) There is created a trust and~~] revolving fund ***shall consist***~~[for the Backside Improvement Commission, consisting]~~ of money allocated to the fund under the provisions of KRS 230.3615, together with any other money which may be contributed to or allocated to the fund from all other sources. Money to the credit of the backside improvement fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year. The ***Kentucky Horse Racing Authority***~~[Backside Improvement Commission]~~ may invest any and all funds received by the~~[trust]~~ fund and interest earned by the investment of said funds in types of investments appropriate to the investment needs of the~~[trust]~~ fund after having considered the financial return on authorized investment alternatives, the financial safety of investment alternatives and the impact of any authorized investments on the state's economy. The ***authority***~~[Backside Improvement Commission]~~ shall review the status of the~~[trust]~~ fund investments quarterly and report its findings to the Finance and Administration Cabinet,~~[the Kentucky Racing Commission]~~ and the Legislative Research Commission.

~~[(3) The Backside Improvement Commission shall employ qualified personnel as may be required to assist the commission in carrying out the provisions of this section. These persons shall serve at the pleasure of the commission and compensation for personnel shall be fixed by the commission. The compensation of personnel and the necessary expenses incurred by the commission or by the committee in carrying out the provisions of this section shall be paid out of the backside improvement fund.]~~

(2)~~[(4)]~~ The purpose of the fund shall be to improve the backside of thoroughbred racing associations averaging one million two hundred thousand dollars ($1,200,000) or less pari-mutuel handle per racing day on live racing. The ***Kentucky Horse Racing Authority***~~[Backside Improvement Commission]~~ shall use the backside improvement fund to promote, enhance, and improve the conditions of the backside of eligible racing associations. Conditions considered shall include but not be limited to the living and working quarters of backside employees.

(3)~~[(5)]~~ The ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section.

Section 42. KRS 230.265 is amended to read as follows:

(1) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the ***authority***~~[commission]~~ on the conduct of equine drug research and testing commissioned by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~. The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) veterinarian from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians, one (1) horseman from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association, one (1) pharmacologist from a list of three (3) submitted by the University of Kentucky, one (1) thoroughbred breeder from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc., one (1) legislator from a list of three (3) submitted by the Legislative Research Commission, one (1) representative of a licensed racing association chosen by the Governor, one (1) member of the harness racing industry from a list of three (3) submitted by the chairman of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, one (1) member from a list of three (3) submitted by the Kentucky Harness Horsemen's Association, and one (1) member of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, from a list of three (3) submitted by the chairman of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, to serve as chairman. The council shall meet at the call of the chairman, a majority of the council, or at the request of the ***authority***~~[commission]~~. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.

(2) The Kentucky Equine Drug Research Council shall review equine drug research and testing research being conducted at the University of Kentucky or with state funds and shall review and report to the ***authority***~~[commission]~~ on drug research and testing research being conducted elsewhere. The council shall advise the ***authority***~~[commission]~~ and make recommendations for establishing an effective drug regulatory policy for Kentucky racing. In addition, the council shall report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.

(3) The ***authority***~~[commission]~~ shall receive one-tenth of one percent (0.1%) of the total amount wagered and subject to the pari-mutuel tax levied in KRS 138.510. This money shall be deducted from the pari-mutuel tax levied in KRS 138.510 and shall be used in financing drug research and testing research in Kentucky and shall be in addition to any funds appropriated to the ***authority***~~[commission]~~ for these purposes in the executive budget.

Section 43. KRS 230.750 is amended to read as follows:

The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a harness horse track under the jurisdiction of the ***authority*** ~~[commission]~~ at which betting is conducted through a pari-mutuel or other similar system shall not exceed eighteen percent (18%) of the gross amount handled on straight wagering pools and twenty-five percent (25%) of the gross amount handled on multiple wagering pools, plus the breaks, which shall be made and calculated to the dime. Multiple wagering pools shall include daily double, perfecta, double perfecta, quinella, double quinella, trifecta, and other types of exotic betting. An amount equal to three percent (3%) of the total amount wagered and included in the commission of a harness host track shall be allocated by the harness host track in the following manner. Two percent (2%) shall be allocated to the host for capital improvements, promotions, including advertising, or purses, as the host track shall elect. Three-quarters of one percent (3/4 of 1%) shall be allocated to overnight purses. One-quarter of one percent (1/4 of 1%) shall be allocated to the Kentucky standardbred, quarterhorse, Appaloosa, and Arabian development fund. This allocation shall be made after deduction from the commission of the pari-mutuel tax but prior to any other deduction, allocation or division of the commission.

Section 44. KRS 230.215 is amended to read as follows:

(1) It is the policy of the Commonwealth of Kentucky, in furtherance of its responsibility to foster and to encourage legitimate occupations and industries in the Commonwealth and to promote and to conserve the public health, safety, and welfare, and it is hereby declared the intent of the Commonwealth to foster and to encourage the horse breeding industry within the Commonwealth and to encourage the improvement of the breeds of horses. Further, it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. Further, it hereby is declared the policy and intent of the Commonwealth that all racing not licensed under this chapter is a public nuisance and may be enjoined as such. Further, it is hereby declared the policy and intent of the Commonwealth that the conduct of horse racing, or the participation in any way in horse racing, or the entrance to or presence where horse racing is conducted, is a privilege and not a personal right; and that this privilege may be granted or denied by the ***authority*** ~~[commission]~~ or its duly approved representatives acting in its behalf.

(2) It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the ***authority*** ~~[commission]~~ forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. In addition to the general powers and duties vested in the ***authority*** ~~[commission]~~ by this chapter, it is the intent hereby to vest in the ***authority*** ~~[commission]~~ the power to eject or exclude from association grounds or any part thereof any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the ***authority*** ~~[commission]~~, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

Section 45. KRS 230.990 is amended to read as follows:

(1) Any person who violates KRS 230.070 or KRS 230.080(3) shall be guilty of a Class D felony.

(2) Any person who violates KRS 230.090 shall be guilty of a Class A misdemeanor.

(3) Any person who violates KRS 230.680 shall be guilty of a Class A misdemeanor.

(4) Any person who refuses to make any report or to turn over sums as required by KRS 230.361 to 230.373 shall be guilty of a Class A misdemeanor.

(5) Any person failing to appear before the ***authority*** ~~[commission]~~ at the time and place specified in the summons issued pursuant to KRS 230.260(7), or refusing to testify, shall be guilty of a Class B misdemeanor. False swearing on the part of any witness shall be deemed perjury and punished as such.

(6) (a) A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ on or in any participant involved in or eligible to compete in a horse race to be viewed by the public.

(b) Any person who, while outside the Commonwealth and with intent to influence the outcome of a horse race contested within the Commonwealth, tampers with or interferes with any equine participant involved in or eligible to compete in a horse race in the Commonwealth is guilty of tampering with or interfering with a horse race.

(c) Tampering with or interfering with a horse race is a Class C felony.

Section 46. KRS 137.170 is amended to read as follows:

(1) Every person engaged in the business of conducting a race meeting at which live horse races are run for stakes, purses, or prizes, under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, shall pay a tentative license tax to the state, as provided in subsection (2) of this section.

(2) Any race track for any year commencing December 1 and ending the following November 30 for the days upon which races are actually conducted for any stake, purse, or prize, shall pay a license tax based on the average daily mutuel handle for the preceding year as follows:

Average Daily Mutuel Handle	License Tax
$0 - $25,000	$ 0
$25,000 - $250,000	$ 175
$250,001 - $450,000	$ 500
$450,001 - $700,000	$1,000
$700,001 - $800,000	$1,500
$800,001 - $900,000	$2,000
$900,001 and above	$2,500

(3) As used in subsection (2) of this section the term "daily mutuel handle" shall mean the total gross amount of money bet or wagered by a race track's patrons by means of pari-mutuel, combination, or French pools on live races conducted by the track.

Section 47. KRS 138.480 is amended to read as follows:

Except for the conduct of harness racing at a county fair, each person entering the grounds or enclosure of any race track at which a live race meeting is being conducted under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~, for the purpose of attending the races or for any other purpose connected therewith, shall pay a tax of fifteen cents ($0.15) to the state, except as otherwise provided in this section. If tickets good for more than one (1) day are issued, the sum of fifteen cents ($0.15) shall be paid by each person using such ticket on each day that it is used. No admission tax shall be collected from any of the employees of the race track, or any of the owners or trainers of horses, or jockeys, or their employees. The admission tax provided for in this section shall be collected by the race track from each person on entering the race track or enclosure on a paid or free admission. The race track shall account to and pay to the state the money so collected.

Section 48. KRS 138.510 is amended to read as follows:

(1) Except for the conduct of harness racing at a county fair, an excise tax is imposed on all tracks conducting pari-mutuel racing under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~. For each track with a daily average handle of one million two hundred thousand dollars ($1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered during the fiscal year. A fiscal year as used in this subsection and subsection (3) of this section shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30. For each track with a daily average handle under one million two hundred thousand dollars ($1,200,000) the tax shall be an amount equal to one and one-half percent (1.5%) of all money wagered during the fiscal year. However, effective January 1, 2001, if a host track located in this state is the location for the conduct of a one (1) day international horse racing event that distributes in excess of a total of ten million dollars ($10,000,000) in purses, an excise tax shall not be imposed on pari-mutuel wagering on live racing conducted that day at the race track. This tax exemption shall remain in effect for any succeeding

one (1) day international horse racing event if the event returns within three (3) years of the previously-held event. For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track on live racing and shall not include money wagered:

(a) At a receiving track;

(b) At a simulcast facility;

(c) On telephone account wagering; or

(d) At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773.

Money shall be deducted from the tax paid by host tracks and deposited to the respective development funds in the amount of three-quarters of one percent (0.75%) of the total live racing handle for thoroughbred racing and one percent (1%) of the total live handle for harness racing.

(2) An excise tax is imposed on:

(a) All licensed tracks conducting telephone account wagering;

(b) All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~; and

(c) All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.

(3) The tax imposed in subsection (2) of this section shall be in the amount of three percent (3%) of all money wagered under subsection (2) of this section during the fiscal year. A noncontiguous track facility approved by the ***Kentucky Horse Racing Authority***~~[Kentucky Racing Commission]~~ on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars ($250,000) or less. The amount of money exempted under this subsection shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.

(4) An amount equal to two percent (2%) of the amount wagered shall be deducted from the tax imposed in subsection (2) of this section and deposited as follows:

(a) If the money is deducted from taxes imposed under subsection (2)(a) and (b) of this section, it shall be deposited in the thoroughbred development fund if the host track is conducting a thoroughbred race meeting or the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if the host track is conducting a harness race meeting; or

(b) If the money is deducted from taxes imposed under subsection (2)(c) of this section, to the thoroughbred development fund if interstate wagering is conducted on a thoroughbred race meeting or to the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if interstate wagering is being conducted on a harness race meeting.

(5) Two-tenths of one percent (0.2%) of the total amount wagered on live racing in Kentucky shall be deducted from the pari-mutuel tax levied in subsection (1) of this section, and one-twentieth of one percent (0.05%) of the total amount wagered on intertrack wagering shall be deducted for the pari-mutuel tax levied in subsection (2) of this section, and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.

(6) One-tenth of one percent (0.1%) of the total amount wagered in Kentucky shall be deducted from the pari-mutuel tax levied in subsections (1), (2), and (3) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subsection shall not replace other funds for capital purposes or operation of equine programs at state universities. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Postsecondary Education may by

administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.

Section 49. KRS 138.530 is amended to read as follows:

(1) The Revenue Cabinet shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so it shall have the general powers and duties granted it in KRS Chapter 131 and KRS 135.050, including the power to enforce, by an action in the Franklin Circuit Court, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.

(2) The remittance of the tax imposed by KRS 138.510 shall be made weekly to the Revenue Cabinet no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting and accompanied by reports as prescribed by the cabinet. All funds received by the Revenue Cabinet shall be paid into the State Treasury and shall be credited to the general expenditure fund.

(3) The supervisor of pari-mutuel betting appointed by the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ shall weekly, during each race meeting, report to the Revenue Cabinet the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.

(4) The supervisor of pari-mutuel betting appointed by the ***Kentucky Horse Racing Authority*** ~~[Kentucky Racing Commission]~~ or his duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines, and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.

(5) Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel pool, including daily double pools, if any.

Section 50. KRS 138.550 is amended to read as follows:

In addition to all other penalties provided in KRS 138.510 to 138.540, when the pari-mutuel system of betting is operated at a track licensed under the provisions of KRS 137.170, said license may be suspended, revoked or renewal refused by the ***Kentucky Horse Racing Authority*** ~~[State Racing Commission]~~ upon the failure of the operator to comply with the provisions of KRS 138.510 to 138.540 or the rules and regulations promulgated by the Revenue Cabinet pursuant thereto even though the pari-mutuel system of betting and the track are operated by different persons, corporations or associations.

Section 51. KRS 18A.115 is amended to read as follows:

(1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:

(a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;

(b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;

(c) Members of boards and commissions;

(d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;

(e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;

(f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;

(g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;

(h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;

(i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;

(j) Physicians employed as such;

(k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;

(l) The judicial department, referees, receivers, jurors, and notaries public;

(m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;

(n) Patients or inmates employed in state institutions;

(o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;

(p) Interim employees;

(q) Officers and members of the state militia;

(r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;

(s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;

(t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);

(u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;

(v) County and Commonwealth's attorneys and their respective appointees;

(w) Chief district engineers and the state highway engineer;

(x) Veterinarians employed as such by the ***Kentucky Horse Racing Authority***~~[Kentucky State Racing Commission or the Kentucky Harness Racing Commission]~~;

(y) Employees of the Kentucky Peace Corps;

(z) Employees of the Council on Postsecondary Education;

(aa) Chief information officer of the Commonwealth; and

(ab) Employees of the Kentucky Commission on Community Volunteerism and Service.

(2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.

(3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.

(4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.

(5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.

(6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

(7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.

(8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

Section 52. KRS 528.110 is amended to read as follows:

(1) Any person who, either for himself or as agent or employee of another, wagers money or anything of value on a horse race run or about to be run or advertised, posted or reported as being run at any race track in or out of this state, or who engages in the occupation of receiving, making, transmitting or negotiating, either in person or by messenger, telephone or telegraph, wagers on horse races run or about to be run or advertised, posted or reported as being run or about to be run at any race track in or out of the state, shall, except in the case of wagers made within the enclosure of a race track licensed by the ***Kentucky Horse Racing Authority*** ~~[state racing commission]~~ during an authorized race meeting at that track, or an enclosure during regular meetings in which running, trotting or pacing races are being conducted by associations regularly organized for that purpose, be guilty of a Class A misdemeanor.

(2) In any prosecution under subsection (1) of this section, the state need not prove that the horse race upon which the wager was placed was actually run. Proof that the wager was made upon what purported to be or what was advertised, reported or understood to be a horse race shall be sufficient to establish a prima facie case for the state.

Section 53. KRS 15.380 is amended to read as follows:

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

(a) State Police officers, but for the commissioner of the State Police;

(b) City, county, and urban-county police officers;

(c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);

(d) State or public university safety and security officers appointed pursuant to KRS 164.950;

(e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;

(f) Airport safety and security officers appointed under KRS 183.880;

(g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and

(h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040.

(2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:

(a) Deputy coroners;

(b) Deputy constables;

(c) Deputy jailers;

(d) Deputy sheriffs under KRS 70.045 and 70.263(3);

(e) Officers appointed under KRS 61.360;

(f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;

(g) Private security officers;

(h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and

(i) Investigators employed by the Division of Charitable Gaming in accordance with KRS 238.510.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:

(a) Sheriffs;

(b) Coroners;

(c) Constables;

(d) Jailers;

(e) ***Kentucky Horse Racing Authority***~~[Racing Commission]~~ security officers employed under KRS 230.240; and

(f) Commissioner of the State Police.

(6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

Section 54. KRS 230.443 is amended to read as follows:

~~[No]~~Quarter ***horses, Appaloosas, and Arabian horses***~~[horse or Appaloosa]~~ foaled by artificial insemination ***or other means*** shall be eligible to race under the provisions of this chapter~~[, but Arabian horses foaled by artificial insemination shall be eligible to race under the provisions of this chapter]~~.

Section 55. Notwithstanding any provision of KRS Chapter 13A, all administrative regulations in effect on the effective date of this Act pursuant to the statutory authority granted to an agency affected by the provisions of this Act shall remain in effect as they exist on the effective date of this Act until the agency amends or repeals the administration regulation pursuant to KRS Chapter 13A. The regulations compiler shall change the appropriate administrative regulations in accordance with the provisions of this Act. The agencies affected by the provisions of this Act shall provide a listing of the administrative regulations that require any changes to the regulations compiler.

Section 56. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Section 57. Any provision of law to the contrary notwithstanding, the General Assembly hereby confirms Governor's Executive Order 2003-858, dated August 20, 2003, to the extent not otherwise confirmed or superseded by this Act. This order abolished the Backside Improvement Commission established under the provisions of KRS 230.218. All personnel, files, equipment and funds heretofore assigned to the Backside Improvement Commission are hereby transferred to the Kentucky Horse Racing Authority. The Kentucky Horse Racing Authority shall also be responsible for carrying out the rights, duties, and function of the Backside Improvement Commission as set forth in KRS 230.218 as well as other statutory provisions relating thereto.

Section 58. Any provision of law to the contrary notwithstanding, the General Assembly hereby confirms Governor's Executive Order 2004-030, dated January 6, 2004, to the extent not otherwise confirmed or superseded by this Act. This order abolished the Kentucky Racing Commission and its membership and established the Kentucky Horse Racing Authority. The initial membership of the Kentucky Horse Racing Authority shall consist of those individuals appointed by the Governor in Executive Order 2004-030, and the terms of those individuals shall expire on the dates set out in that order.

Approved April 22, 2004

CHAPTER 192

(SB 228)

AN ACT relating to debts owed to the Commonwealth and declaring an emergency.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 1 to 3 of this Act:

(a) "Agency" means an organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010;

(b) "Cabinet" means the Revenue Cabinet;

(c) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;

(d) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse; and

(e) "Debt" means:

1. A sum certain which has been certified by an agency as due and owing; and

2. For the Court of Justice, "debt" means a legal debt, including any fine, fee, court costs, or restitution due the Commonwealth, which have been imposed by a final sentence of a trial court of the Commonwealth and for which the time permitted for payment pursuant to the provisions of KRS 23A.205(3) or 24A.175(4) has expired.

(2) The Finance and Administration Cabinet shall develop for the executive branch of state government a system of internal controls and preaudit policies and procedures applicable to disbursement transactions for the purpose of prevention and detection of errors or fraud and abuse prior to the issuance of a check or

warrant. The initial policies and procedures shall be established and implemented no later than October 1, 2004, and shall focus first on programs or activities that expend the most federal and general fund dollars. The Finance and Administration Cabinet shall develop preaudit procedures that meet the unique needs of each agency.

(3) In establishing these systems of internal control and preaudit policies and procedures, the Finance and Administration Cabinet shall:

(a) Consult with each agency within the executive branch to ascertain its unique fraud risks;

(b) Establish policies and procedures for agency-level oversight of fraud risks, including risk assessment, risk tolerance, and management policies, and fraud-prevention processing controls;

(c) Establish systems and procedures for detecting both unintentional errors and fraudulent misrepresentations that may have occurred in vendor invoices submitted for payment, applications submitted for benefits, claims for refunds of amounts previously paid or withheld, and other disbursements;

(d) Establish systems and procedures for preventing and detecting unintentional errors and the fraudulent disbursement of funds by state government employees in the processing, approving and paying of invoices, refunds, vouchers, benefit payments and other disbursements; and

(e) Consult with the state Auditor of Public Accounts, the Governor's Office for Technology, the American Institute of Certified Public Accountants, the Association of Certified Fraud Examiners, law enforcement agencies, or any other entity with knowledge and expertise in the detection and prevention of fraud.

(4) Each agency shall diligently attempt to collect amounts paid to a vendor, provider, or recipient due to error, fraud, or abuse for sixty (60) days after the improper payment is discovered. If the improper payment has not been recovered after sixty (60) days, the agency shall certify the improper payment as a debt of the agency and shall refer all certified debts to the cabinet.

(5) Any funds recovered by an agency within the sixty (60) day collection period allowed under subsection (4) of this section and prior to referral to the cabinet shall be allocated to the fund from which the improper payment was expended.

(6) Each agency shall submit annual summaries of debts due to error, fraud, or abuse, improper payments discovered, and certified debts referred to the cabinet to the Legislative Research Commission. These summaries shall include but not be limited to:

(a) Debts owed the Commonwealth that have been identified by the agency, in accordance with the preaudit procedures established under this section, as those resulting from error, fraud, or abuse, of either the payee or the state agency;

(b) The aggregate amount of money collected by the agency on those debts during the sixty (60) day period allowed under subsection (4) of this section; and

(c) The aggregate amount of certified debts that the agency referred to the cabinet.

(7) Each agency shall provide information about each debt due to error, fraud, or abuse that is certified under this section to the State Treasurer for the Treasurer's action under subsection (1) of Section 4 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) Debts that are certified by an agency as provided in Section 1 of this Act shall be referred to the cabinet for collection. The cabinet shall be vested with all the powers necessary to collect any referred debts.

(2) For those debts deemed unfeasible or cost ineffective to pursue, the cabinet shall maintain written records of the debt and the reason the debt was deemed unfeasible or cost ineffective to pursue. These debts shall be written off in accordance with administrative regulations promulgated under the authority of subsection (6) of this section.

(3) All certified debts received by the cabinet after the sixty (60) day collection period allowed in subsection (4) of Section 1 of this Act shall be subject to interest at the tax interest rate determined under KRS 131.183, on the amount of the debt from the date the debt is certified to the cabinet until it is satisfied, and a twenty-five percent (25%) collection fee. The cabinet may retain the collection fee and shall deposit the interest and

recovered funds in the budget reserve trust fund established in KRS 48.705, except for Medicaid benefits and funds required by law to be remitted to a federal agency.

(4) The secretary of the cabinet may refer to the Attorney General any unsatisfied claim, demand, account, or judgment in favor of the Commonwealth for further civil or criminal action under KRS 15.060.

(5) (a) The cabinet shall report annually by October 1 to the Legislative Research Commission on all referred certified debts, including at least a summary of the debts by agency, fund type, and age, the latter compiled in the following four (4) categories:

1. Debts from ninety (90) to one hundred seventy-nine (179) days old;

2. Debts from one hundred eighty (180) to three hundred sixty-four (364) days old;

3. Debts over one (1) year old but less than three (3) years old; and

4. Debts three (3) years old or older.

(b) The annual report shall also include the collection amount of the debts in paragraph (a) of this subsection and the accounts to which the amounts are credited.

(6) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish standards that agencies shall use in determining when to write debts off the books.

SECTION 3. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) The Court of Justice shall initiate, by October 1, 2004, fully implement by October 1, 2005, and thereafter maintain a system for tracking and identifying debts.

(2) The Court of Justice shall establish and operate a system for collecting debt.

(3) In establishing the systems required by this section, the Court of Justice shall consider technology that could assist in the accurate, timely, and efficient delivery of payments of debts.

(4) The Court of Justice, Justice Cabinet, and Revenue Cabinet shall collaborate to implement a system, if feasible, to identify and collect debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually and designated separately as part of the report required pursuant to Section 2 of this Act beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.

Section 4. KRS 44.030 is amended to read as follows:

(1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when he or his assignor is indebted to the state. The claim, to the extent it is allowed, shall be credited to the account of the person so indebted, and if there is any balance due him after settling the whole demand of the state ***that***~~[such]~~ balance shall be paid to him.

(2) The Finance and Administration Cabinet shall provide the Cabinet for Families and Children with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Families and Children shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.

(3) Each agency and the Court of Justice shall provide information to the State Treasurer concerning any debt referred to the Revenue Cabinet for collection under Section 1 of this Act.

Section 5. KRS 45.240 is amended to read as follows:

(1) Whenever any payment from public money is made in error, or for an amount in excess of the amount found to be properly due and payable, and the payment or excess amount is~~[later]~~ recovered ***within sixty (60) days from the date the erroneous or excess payment was identified, the funds shall be allocated to the fund from which the improper payment was expended***, the balance in the appropriation from which the payment was made shall be increased by the amount recovered, and the amount recovered shall be deducted from the disbursements from that appropriation.

(2) If the payment or excess amount which is later recovered is in the form of an unnegotiated State Treasurer's check, said check shall be transmitted direct to the State Treasurer who shall void it. After voiding the check, the State Treasurer shall notify the appropriate agency of the action taken concerning the check.

(3) Whenever any payment from public money is made in error, or for an amount in excess of the amount found to be properly due and payable, and the payment or excess amount is recovered after sixty (60) days from the date the erroneous or excess payment was identified, the provisions set forth in Sections 1 to 2 of this Act shall apply, and the funds shall be allocated as provided in those sections.

Section 6. KRS 15.060 is amended to read as follows:

Upon written request of the Revenue Cabinet, the Attorney General shall:

(1) With the assistance of the Auditor of Public Accounts and the Revenue Cabinet, investigate the condition of ***any***~~[all]~~ unsatisfied ***claim, demand, account, and judgment***~~[claims, demands, accounts and judgments]~~ in favor of the Commonwealth.

(2) When he believes that any fraudulent, erroneous or illegal fee bill, account, credit, charge or claim has been erroneously or improperly approved, allowed or paid out of the Treasury to any person, institute the necessary actions to recover the same. To this end he may employ assistants and experts to assist in examining the fee bills, accounts, settlements, credits and claims, and the books, records and papers of any of the officers of the Commonwealth.

(3) Institute the necessary actions to collect and cause the payment into the Treasury of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth, except where specific statutory authority is given the Revenue Cabinet to do so.

(4) Comply with KRS 48.005, if any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority.

Section 7. Whereas the financial condition of the Commonwealth and the revenue shortfall in the current year have necessitated budget cuts and reduction in government services, and it is vital that the Commonwealth collect outstanding debts as expeditiously as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 22, 2004

CHAPTER 193

(SB 247)

AN ACT relating to metering of electricity.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act:

(1) "Eligible customer-generator" means a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements.

(2) "Eligible electric generating facility" means an electric generating facility that:

(a) Is connected in parallel with the electric distribution system;

(b) Generates electricity using solar energy; and

(c) Has a rated capacity of not greater than fifteen (15) kilowatts.

(3) "Kilowatt hour" means a measure of electricity defined as a unit of work of energy, measured as one (1) kilowatt of power expended for one (1) hour.

(4) "Net metering" means measuring the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one tenth of one percent (0.1%) of a supplier's single hour peak load during the previous year, the obligation of the supplier to offer net metering to a new customer-generator may be limited by the commission.

(2) Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense. If additional meters are installed, the net metering calculation shall yield the same result as when a single meter is used.

(3) The amount of electricity billed to the eligible customer-generator using net metering shall be calculated by taking the difference between the electricity supplied by the retail electric supplier to the customer and the electricity generated and fed back by the customer. If time-of-day or time-of-use metering is used, the electricity fed back to the electric grid by the eligible customer-generator shall be net-metered and accounted for at the specific time it is fed back to the electric grid in accordance with the time-of-day or time-of-use billing agreement currently in place.

(4) Each net metering contract or tariff shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

(5) The following rules shall apply to the billing of net electricity:

(a) The net electricity produced or consumed during a billing period shall be read, recorded, and measured in accordance with metering practices prescribed by the commission;

(b) If the electricity supplied by the retail electric supplier exceeds the electricity generated and fed back to the supplier during the billing period, the customer-generator shall be billed for the net electricity supplied in accordance with subsections (3) and (4) of this section;

(c) If the electricity fed back to the retail electric supplier by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be credited for the excess kilowatt hours in accordance with subsections (3) and (4) of this section. This electricity credit shall appear on the customer-generator's next bill;

(d) If a customer-generator closes his account, no cash refund for residual generation-related credits shall be paid; and

(e) Excess electricity credits are not transferable between customers or locations.

(6) Electric generating systems and interconnecting equipment used by eligible customer-generators shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC), Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories.

(7) An eligible customer-generator installation is transferable to other persons or service locations upon notification to the retail electric supplier and verification that the installation is in compliance with the applicable safety and power quality standards in subsection (6) of this section.

SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) The commission shall have original jurisdiction over any dispute between a retail electric supplier and an eligible customer-generator, regarding net metering rates, service, standards, performance of contracts, and testing of net meters.

(2) No later than one hundred eighty (180) days from the effective date of this Act, each retail electric supplier shall file with the commission a net metering tariff that includes all terms and conditions of its net metering program, including interconnection standards meeting the requirements of subsection (6) of Section 2 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

Nothing in this Act shall apply to a United States corporate agency or instrumentality of the United States government, or a distributor of electric power primarily supplied by such a corporate agency or instrumentality of the United States government.

Approved April 22, 2004

CHAPTER 194

(SJR 83)

A JOINT RESOLUTION making official state designations.

WHEREAS, Millersburg Military Institute, founded in 1893, is the only surviving military college-preparatory school in Kentucky; and

WHEREAS, it has served the Commonwealth and our nation over the past 110 years with honor and distinction; and

WHEREAS, Millersburg Military Institute adheres to a tradition of excellence by providing every cadet with an academic and athletic experience while instilling the values of character and leadership so that each graduate will take his place as a citizen leader of tomorrow; and

WHEREAS, the academic experience is the primary focus of this historic institution which bench marks with the top colleges and universities in the United States to ensure that its graduates are prepared for the academic challenges of college; and

WHEREAS, preparing cadets for success at four year colleges and universities is the main goal of the institute's highly qualified faculty; and

WHEREAS, Millersburg Military Institute has, through the grace of God, developed the character of thousands of youth and assisted them in attaining positions of responsibility in communities throughout the world; and

WHEREAS, Millersburg Military Institute has been a bastion of patriotism, leadership, and Christian development through the honor code which demands the highest standards of honorable living. "A Cadet Will Not Lie, Cheat, or Steal" is at the heart of the Millersburg Military Institute philosophy; and

WHEREAS, Millersburg Military Institute has excelled on the playing fields of Kentucky in pursuit of both physical development and good sportsmanship, winning State Championships in basketball in 1927 and Track and Field in 1966; and

WHEREAS, Millersburg Military Institute has played its role in war and peace since 1893 by providing hundreds of valiant soldiers, sailors, airmen, and marines to serve our nation with honor and distinction; and

WHEREAS, the mission of Millersburg Military Institute is established in its motto, "Est Nulla Via Invia Virute" (There is No Way Except The Way of Virtue) and is based on duty, honor, and country; and

WHEREAS, many alumni have embarked on stellar military, business, and civic leadership careers; and

WHEREAS, the Commonwealth of Kentucky is proud of the rich legacy of Millersburg Military Institute and recognizes it's contributions to education in Kentucky;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Millersburg Military Institute is designated as "The Military School of Kentucky."

Section 2. The Legislative Research Commission is directed to send a copy of this Resolution to Millersburg Military Academy, Post Office Box 278, 1122 Main Street, Millersburg, Kentucky, 40348.

Section 3. The Transportation Cabinet shall designate the bridge on Kentucky Route 109 over the Trade Water River at mile marker 0.35 near the town of Dawson Springs the "Dudley Riley Bridge", and shall, within 30 days of the effective date of this Resolution, erect appropriate signs at each end of the bridge described in this section.

Approved April 22, 2004

CHAPTER 195

(SJR 148)

A JOINT RESOLUTION establishing a suicide prevention advisory committee.

WHEREAS, suicide claims the lives of approximately 500 Kentuckians each year and, according to Healthy Kentuckians 2010, there are twice as many suicides as homicides among Kentuckians each year; and

WHEREAS, in 2001, Kentucky's rate of suicide of 12.2 deaths per 100,000 residents is higher than the national average of 10.7 deaths per 100,000 residents, and it is the second leading cause of death for citizens ages 15 to 34, and the fourth leading cause of death for citizens ages 35 to 54; and

WHEREAS, suicide has profound emotional effects on a wide network of family members, friends, colleagues and associates; and

WHEREAS, the President's New Freedom Commission on Mental Health has challenged the nation to advance strategies for suicide prevention; and

WHEREAS, the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses that was established by the 2000 General Assembly is preparing a comprehensive state plan to improve access to mental health services to Kentucky citizens; and

WHEREAS, a dedicated group of mental health professionals, public health officials, educators, family members, and survivors of suicide have been meeting for approximately 2 years to advance state and local suicide prevention strategies;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. The Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses shall establish a suicide prevention workgroup to develop recommendations and strategies to reduce suicide rates consistent with the goals of Healthy Kentuckians 2010. The workgroup shall be appointed by the co-chairs of the commission and shall include a representative of the Cabinet for Health Services' existing suicide prevention program, and may include representatives from state and regional mental health agencies, educational and correctional agencies, survivors of suicide and support group providers, crisis responders, emergency medical technicians and first responders, commission members, and others. The chairperson of the suicide prevention workgroup shall be a current member of the commission appointed by the co-chairs of the commission.

Section 2. The suicide prevention workgroup shall develop recommendations and strategies to coordinate suicide prevention and awareness efforts in the public and private sectors and to promote consistency of public health practices.

Section 3. The suicide prevention workgroup shall report to the Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses by July 1, 2005, and the commission shall include recommendations relating to suicide prevention in its 2005 annual report to the Governor and the Legislative Research Commission.

Approved April 22, 2004

CHAPTER 196

(SJR 156)

A JOINT RESOLUTION directing the Office of Education Accountability to conduct a study of the Commonwealth Accountability Testing System.

WHEREAS, Kentucky's education system requires that each school and school district be held accountable for student achievement; and

WHEREAS, Kentucky has made significant investment in a comprehensive accountability and assessment system; and

WHEREAS, teachers, principals, and other school personnel bear the major responsibility for implementing the assessment system; and

WHEREAS, the federal No Child Left Behind Act requires ongoing assessment of all students in key content areas in grades 3 through 8;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. Under the direction of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability is directed to conduct an in-depth study of the Commonwealth Assessment Testing System (CATS).

Section 2. The study shall include but not be limited to an examination of:

(1) The appropriateness of the CATS components used to measure achievement levels of the core content for all Kentucky students;

(2) The validity and adequacy of CATS results as indicators of individual student achievement and to give parents the information they need to know about the individual progress of their children;

(3) The alignment of CATS with the requirements of the No Child Left Behind Act;

(4) The validity of the writing portfolio as an assessment component within the CATS system and appropriateness of the writing portfolio to be included in the school accountability index;

(5) The value of the CATS assessment in enhancing instructional practices and curriculum on a day to day basis;

(6) The effects of the CATS assessment on teachers, staff, and administrators; and

(7) The actual costs for the CATS system on a per pupil basis.

Section 3. The Kentucky Department of Education is directed to provide the data, information, and any staff analysis requested by the Office of Education Accountability to facilitate completion of the study.

Section 4. The Office of Education Accountability shall utilize information from the National Technical Advisory Panel for Assessment and Accountability and other agencies it deems necessary.

Section 5. The Office of Education Accountability shall provide a written draft copy of the report to the Education Assessment and Accountability Review Subcommittee by September 15, 2004. Upon approval of the subcommittee, the final report shall be submitted to the Interim Joint Committee on Education and the Legislative Research Commission.

Section 6. Upon request of the Education Assessment and Accountability Review Subcommittee and approval by the Legislative Research Commission, consultants may be employed to assist the Office of Education Accountability in the completion of the study.

Section 7. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Approved April 22, 2004

CHAPTER 197

(HB 396)

AN ACT making appropriations for the operations, maintenance, support, and functioning of the judicial branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state-supported activities.

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

PART I

OPERATING BUDGET

There is appropriated out of the General Fund, Restricted Funds accounts, or Federal Funds accounts for the fiscal year beginning July 1, 2004, and ending June 30, 2005, and for the fiscal year beginning July 1, 2005, and ending June 30, 2006, in the following sums to be used for the purposes of the judicial branch of the government of the Commonwealth of Kentucky, including the Supreme Court, Court of Appeals, Circuit Court, Family Court, District Court, the Administrative Office of the Courts, pretrial services, juvenile services, judicial boards and commissions, the State Law Library, judicial retirement, Local Facilities Fund, Local Facilities Use Allowance Contingency Fund, and for services performed by the circuit clerks' offices, including both Circuit and District Court support.

1. Court of Justice

a. Court operations and administration

	2004-05	2005-06
General Fund	156,513,000	164,912,600
Restricted Funds	13,296,300	14,175,800
Federal Funds	3,096,500	1,604,200
Total	172,905,800	180,692,600

Funds are included to provide a one and one-half percent salary adjustment in fiscal year 2004-2005 and a three percent salary adjustment in fiscal year 2005-2006 for nonelected court personnel. Included are funds to provide a one and one-half percent salary adjustment in fiscal year 2004-2005 and a three percent salary adjustment in fiscal year 2005-2006 for justices and judges. Also included are funds for the salaries of the circuit clerks in fiscal year 2004-2005 and in fiscal year 2005-2006 as provided for in the Judicial Branch Budget Recommendation.

Included in the above General Fund appropriation is $2,198,000 in fiscal year 2004-2005 and $4,015,700 in fiscal year 2005-2006 to replace Federal Funds for existing drug court sites whose funding expires during the 2004-2006 fiscal biennium. Included in the above General Fund appropriation is $88,700 in fiscal year 2004-2005 and $109,600 in fiscal year 2005-2006 to replace Restricted Funds for Kenton Juvenile and Whitley Juvenile Drug Courts.

Notwithstanding KRS 24A.100(3), funds are included in the above General Fund appropriation to continue the statutory maximum salary of trial commissioners as provided for in the Judicial Branch Budget Recommendation.

Included in the above General Fund appropriation is $225,000 in fiscal year 2004-2005 and $225,000 in fiscal year 2005-2006 to support the Kentucky Legal Education Opportunities (KLEO) Program. Participants may be required to meet certain grade point average (GPA) conditions. Both phases of the Kentucky Legal Education Opportunities (KLEO) Program shall be operational for fiscal years 2004-2005 and 2005-2006.

Included in the above Restricted Funds appropriation is $7,339,300 in fiscal year 2004-2005 and $7,732,100 in fiscal year 2005-2006 to support deputy clerk positions, salary enhancements, and related initiatives in the circuit clerk's offices. These amounts include a one and one-half percent salary increment in fiscal year 2004-2005 and a three percent salary increment in fiscal year 2005-2006, and the employer's cost for benefits, including health insurance based on the September 1, 2003, Restricted Funds personnel level. ~~[The Chief Justice of the Supreme Court shall ensure these funds are not utilized for any other purpose within the Judicial Branch budget or for any unfunded purposes not specified in this Act.]~~

Included in the above General Fund appropriation is $482,000 in fiscal year 2004-2005 and $1,486,900 in fiscal year 2005-2006 to provide an Employee Health Insurance cost-of-living adjustment (COLA) for non-elected personnel and circuit clerks, which shall be added to the employee's base salary and employee's wages to help offset the rising cost of employees' health insurance premiums. ~~[The Chief Justice of the Supreme Court shall ensure these funds are not utilized for any other purpose within the Judicial Branch budget or for any unfunded purposes not specified in this Act.]~~

b. Local Facilities Fund

	2004-05	2005-06
General Fund	59,442,800	59,994,600

Included in the above appropriation are moneys to compensate local units of government for providing court space and for costs incurred in the development of local court facilities as defined in KRS Chapter 26A and provided in Part II of this Act, and to perform all other acts required or authorized by KRS Chapter 26A.

The balance remaining at the end of fiscal year 2003-2004 totaling $2,500,000, shall not carry forward into fiscal year 2004-2005 and shall lapse to the credit of the General Fund Surplus account (KRS 48.700).

Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2003-2004 shall not lapse and shall continue into fiscal year 2004-2005, and any unexpended balance remaining at the close of fiscal year 2004-2005 shall not lapse and shall be continued into fiscal year 2005-2006.

The use allowance for the Fayette County Courthouse is contingent upon Short Street in Lexington, Kentucky, remaining open to vehicular traffic.

c. Local Facilities Use Allowance Contingency Fund

	2004-05	2005-06
General Fund	-0-	-0-

Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2003-2004 shall not lapse and shall continue into fiscal year 2004-2005, and any unexpended balance remaining at the close of fiscal year 2004-2005 shall not lapse and shall be continued into fiscal year 2005-2006 to provide for cost overruns in authorized court facilities projects not to exceed 15 percent of the use allowance in accordance with KRS Chapter 26A.

TOTAL - COURT OF JUSTICE

	2004-05	2005-06
General Fund	215,955,800	224,907,200
Restricted Funds	13,296,300	14,175,800
Federal Funds	3,096,500	1,604,200
TOTAL	232,348,600	240,687,200

2. Judicial Form Retirement System

	2004-05	2005-06
General Fund	2,299,800	2,303,300

General Fund amounts are included to provide for the 2003 actuarial assessed needs of the Judicial Form Retirement System.

TOTAL - OPERATING BUDGET

	2004-05	2005-06
General Fund	218,255,600	227,210,500
Restricted Funds	13,296,300	14,175,800
Federal Funds	3,096,500	1,604,200
TOTAL	234,648,400	242,990,500

PART II

CAPITAL PROJECTS BUDGET

1. Local Facility Projects

a. Franklin County - Lease - Office Space

b. Franklin County - Lease - Court of Appeals

c. Jefferson County - Courts Parking Lease

For any court facility project which is occupied and use allowance funding is insufficient, the use allowance payments shall be approved from the Local Facilities Use Allowance Contingency Fund. If funds are not available in the Local Facilities Use Allowance Contingency Fund, the use allowance payments shall be deemed a necessary governmental expense (General Fund Surplus Account, KRS 48.700).

Nothing in this Act shall reduce the funding of court facility projects authorized by the General Assembly.

TOTAL - JUDICIAL BRANCH BUDGET

	2004-05	2005-06
General Fund	218,255,600	227,210,500
Restricted Funds	13,296,300	14,175,800
Federal Funds	3,096,500	1,604,200
TOTAL	234,648,400	242,990,500

PART III

GENERAL PROVISIONS

1. The Director of the Administrative Office of the Courts, with the approval of the Chief Justice, may expend any of the funds appropriated for the court operation and administration in any lawful manner and for any legal purpose that the Chief Justice shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the judicial branch of government.

2. The Court of Justice shall not incur any obligation for any program against the General Fund appropriations contained in this Act unless that program may be reasonably determined to have been contemplated by the proposed judicial budget, as modified and enacted, and supported by the statutory budget memorandum and other pertinent records.

3. Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provisions thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

4. Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2004 General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

5. KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

6. Notwithstanding KRS 45.229, any unexpended balance remaining in the Court's Restricted Funds accounts or Federal Funds accounts at the close of the fiscal years ending June 30, 2004, and June 30, 2005, shall not lapse and shall continue into the next fiscal year.

7. The Chief Justice shall cause the Director of the Administrative Office of the Courts to prepare a final budget document reflecting the 2004-2006 biennial budget of the Court of Justice. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within 60 days of the adjournment of the 2004 Regular Session of the General Assembly.

8. The Chief Justice of the Commonwealth of Kentucky shall have the ability to transfer funds to other programs and budget units within the Judicial Branch. Any funds transferred to other budget units within the Judicial Branch may be used to support any activity, program, or operation of the budget unit or program receiving the respective funds.

9. Funding for the Kentucky Legal Education Opportunities (KLEO) Program has been continued during fiscal year 2004-2005 and fiscal year 2005-2006.

10. ~~[The Chief Justice shall not reallocate or reduce the salary, annual increment, or related benefits, including cost of living adjustments provided by the 2004 General Assembly to help offset the employee's share of health insurance premiums, for any Judicial Branch employee from that appropriated by the 2004 General Assembly for fiscal biennium 2004-2006 for any purposes not specified in this Act.~~

~~11. It is the intent of the General Assembly that the Court of Justice shall not eliminate or reduce the number of Administrative Office of the Courts, Circuit Clerks', District Court, or Circuit Court employees below the level employed on January 1, 2004. Furthermore, Restricted Funds support provided for deputy clerks' salary~~

~~enhancements and initiatives shall not be reallocated within the Judicial Branch budget for any unfunded purposes not specified in this Act.~~

~~12.]~~ Proposed revisions to Restricted Funds and Federal Funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Administrative Office of the Courts shall notify on a timely basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

11. ~~[13.]~~ By September 30 of each year, the Judicial Branch shall submit a report to the Interim Joint Committee on Appropriations and Revenue which details the amount of arrest fees assessed and remitted to each local law enforcement agency for the preceding fiscal year. This report shall be submitted in electronic format.

12. ~~[14.]~~ By September 30 of each year, the Judicial Branch shall submit a report detailing the amount and nature of uncollected court fees for the preceding fiscal year. This report shall be submitted in electronic format.

PART IV

BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Judicial Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Legislative Research Commission Note (5/18/2004). Material that is bracketed and struck through within this bill represents text vetoed by the Governor on April 23, 2004.

Approved in part and vetoed in part, April 23, 2004