

**CHAPTER 149****(HB 234)**

AN ACT relating to business organizations.

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

SECTION 1. SUBCHAPTER 1 OF KRS CHAPTER 362 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter, unless the context otherwise requires:*

- (1) *"Business" includes every trade, occupation, and profession;*
- (2) *"Debtor in bankruptcy" means a person who is the subject of;*
  - (a) *An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or*
  - (b) *A comparable order under federal, state, or foreign law governing insolvency;*
- (3) *"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;*
- (4) *"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the transferee of all or a part of a partner's transferable interest;*
- (5) *"Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;*
- (6) *"Entity" means a corporation, foreign corporation, not-for-profit corporation, profit or not-for-profit unincorporated association, business or statutory trust, estate, partnership, limited partnership, trust, two (2) or more persons having a joint or common economic interest, and a state, national, or foreign government;*
- (7) *"Foreign limited liability partnership" means a partnership that:*
  - (a) *Is formed under laws other than the laws of this Commonwealth; and*
  - (b) *Has the status of a limited liability partnership under those laws;*
- (8) *"Limited liability partnership" means a partnership that has filed a statement of qualification under Section 69 of this Act and does not have a similar statement in effect in any other jurisdiction;*
- (9) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;*
- (10) *"Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 25 of this Act, predecessor law, or comparable law of another jurisdiction;*
- (11) *"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;*
- (12) *"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;*
- (13) *"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;*
- (14) *"Person" means an individual, an entity or any other legal or commercial entity;*
- (15) *"Professional partnership" means a partnership organized under this subchapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this subchapter, all provisions of this subchapter governing partnerships shall be applicable to professional partnerships;*

- (16) *"Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;*
- (17) *"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;*
- (18) *"Regulatory board" means the agency that is charged by law with the licensing and regulation of the practice of the profession which the professional partnership is organized to provide;*
- (19) *"Sign" or "signature" includes any manual, facsimile, conformed or electronic signature;*
- (20) *"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;*
- (21) *"Statement" means a statement of partnership authority under Section 30 of this Act, a statement of denial under Section 31 of this Act, a statement of dissociation under Section 52 of this Act, a statement of dissolution under Section 58 of this Act, a statement of merger under Section 67 of this Act, a statement of qualification under Section 69 of this Act, a statement of foreign qualification under Section 72 of this Act, or an amendment or cancellation of any of the foregoing; and*
- (22) *"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.*

SECTION 2. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person knows a fact if the person has actual knowledge of it.*
- (2) *A person has notice of a fact if the person:*
  - (a) *Knows of it;*
  - (b) *Has received a notification of it;*
  - (c) *Has reason to know it exists from all of the facts known to the person at the time in question; or*
  - (d) *By reason of a filing or recording to the extent provided by and subject to the limitations set forth in subsection (4) or (5) of Section 30 of this Act, subsection (3) of Section 52 of this Act, or subsection (3) of Section 58 of this Act.*
- (3) *A person notifies or gives a notification to another by taking steps reasonably calculated to inform the other person in ordinary course, whether or not the other person obtains knowledge of it.*
- (4) *A person receives a notification when the notification:*
  - (a) *Comes to the person's attention; or*
  - (b) *Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.*
- (5) *Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.*
- (6) *A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.*

SECTION 3. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this subchapter governs relations among the partners and between the partners and the partnership.*
- (2) *The partnership agreement shall not:*
- (a) *Vary the rights and duties under Section 5 of this Act except to eliminate the duty to provide copies of statements to all of the partners;*
  - (b) *Unreasonably restrict the right of access to books and records under subsection (2) of Section 38 of this Act or unreasonably restrict the right to information under subsection (3) of Section 38 of this Act;*
  - (c) *Eliminate the duty of loyalty under subsection (2) of Section 39 of this Act or subsection (2)(c) of Section 48 of this Act, but:*
    1. *The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or*
    2. *All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;*
  - (d) *Unreasonably reduce the duty of care under subsection (3) of Section 39 of this Act or subsection (2)(c) of Section 48 of this Act;*
  - (e) *Eliminate the obligation of good faith and fair dealing under Section 39 of this Act, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;*
  - (f) *Vary the power to dissociate as a partner under subsection (1) of Section 47 of this Act, except to require the notice under subsection (1) of Section 46 of this Act to be in writing;*
  - (g) *Vary the right of a partner or the partnership to seek a partner's expulsion by judicial determination or vary the right of a court to expel a partner in the events specified in subsection (5) of Section 46 of this Act;*
  - (h) *Vary the requirement to wind up the partnership business in cases specified in subsection (4), (5), or (6) of Section 54 of this Act; or*
  - (i) *Vary the law applicable to a limited liability partnership under subsection (2) of Section 6 of this Act; or*
  - (j) *Vary the liabilities and remedies under Section 40 of this Act to a greater extent than variations are in fact made under this section in the substantive rights in the partnership agreement giving rise to the partner claims at issue.*
- (3) *If a written partnership agreement contains a provision to the effect that any amendment to the partnership agreement must be in writing and adopted in accordance with the provisions of the partnership agreement, that provision shall be enforceable in accordance with its terms, and any agreement among the partners concerning the partnership which is not in writing and adopted in accordance with the provisions of the partnership agreement shall not be part of the partnership agreement.*

SECTION 4. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless displaced by particular provisions of this subchapter, the principles of law and equity supplement this subchapter.*
- (2) *If an obligation to pay interest arises under this subchapter and the rate is not specified, then the rate is that specified in KRS 360.010.*
- (3) *Subject to subsection (2) of Section 3 of this Act, it shall be the policy of the General Assembly through this subchapter to give maximum effect to the principles of freedom of contract and the enforceability of partnership agreements. Although this subchapter is in derogation of common law, the rules of*

*construction that require strict construction of statutes that are in derogation of common law shall not apply to its provisions. Except as otherwise expressly provided herein, this subchapter shall not be construed to impair the obligation of any contract existing when this subchapter, or any amendment thereto, becomes effective, nor to affect any action or proceeding begun, or right accrued before this subchapter or any amendment thereto takes effect.*

- (4) *A professional partnership shall be governed by the laws, whether statutory or common law, applicable to other partnerships. Except for the provisions of this subchapter concerning the personal liability of partners, employees, and agents of a partnership, nothing in this subchapter shall restrict, limit, or expand in any manner the authority and duty of any regulatory board to:*
- (a) *License individual persons providing professional services; and*
  - (b) *Regulate the practice of persons providing professional services which are within the jurisdiction of the regulatory board, even though the persons are partners, employees, or agents of a professional partnership, or provide professional services through a professional partnership, including the establishment of regulations concerning:*
    - 1. *The qualifications of partners of a professional partnership;*
    - 2. *The transfer of partnership interests in a professional partnership; or*
    - 3. *The provision of one (1) or more professional services through a professional partnership.*

SECTION 5. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A statement may be filed in the office of Secretary of State. A filed statement has the effect provided in this subchapter with respect to partnership property located in or transactions that occur in this Commonwealth.*
- (2) *A certified copy of a statement that has been filed in the office of the Secretary of State may be filed with and recorded by any county clerk to which the statement is presented for filing and recording.*
- (3) *A statement filed by a partnership shall be executed by at least two (2) partners. Other statements shall be executed by a partner or other person authorized by this subchapter.*
- (4) *A person authorized by this subchapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation. No amendment or cancellation shall be made with respect to a statement of merger or statement of dissolution after filing with the Secretary of State.*
- (5) *A person authorized by this subchapter to file a statement may correct a filed statement if the statement contains information that was incorrect as of the time of the original filing or if the statement was defectively executed, attested, sealed, verified or acknowledged. A statement is corrected by filing with the Secretary of State a statement of correction that describes the original filing, specifies the information that was incorrect as of the original filing or the manner in which the execution was defective, corrects the incorrect information or the defective execution and is accompanied by a copy of the original defective statement, accompanied by the proper filing fee. A statement of correction shall be effective as of the effective date of the statement it corrects except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, the statement of correction shall be effective in the same manner as they were on notice of the original statement.*
- (6) *A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.*
- (7) *A person who executes a statement shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.*
- (8) *It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing. Any person who violates this subsection shall be guilty of a Class B misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).*

- (9) *The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The county clerk may collect a fee of ten dollars (\$10.00) for recording a statement.*
- (10) *The Secretary of State may prescribe and furnish on request forms for:*
- (a) *A statement of change of registered office or registered agent;*
  - (b) *An application to reserve a name;*
  - (c) *An application to cancel the reservation of a name;*
  - (d) *A resignation of a registered agent or registered office or both;*
  - (e) *An annual report; and*
  - (f) *An amendment to the annual report.*
- (11) *The Secretary of State may mandate the use of the forms listed in subsection (10) of this section.*
- (12) *The Secretary of State may prescribe and furnish on request forms for any other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.*

SECTION 6. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.*
- (2) *The law of this Commonwealth governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.*

SECTION 7. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partnership governed by this subchapter is subject to any amendment to or repeal of this subchapter.*

SECTION 8. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A statement shall satisfy the requirements of this section, and of any other section of this subchapter that adds to or varies these requirements, to be entitled to filing by the Secretary of State.*
- (2) *A statement shall contain the information required by this subchapter. It may also contain other information.*
- (3) *The statement shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form.*
- (4) *The statement shall be in the English language. A partnership name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any statement that may be filed by a foreign partnership that is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the partnership is formed may be in a language other than English if accompanied by a reasonably authenticated English translation.*
- (5) *The person or persons executing the statement shall sign it and state beneath or opposite the signature the name of the person and the capacity in which they sign.*
- (6) *The person or persons executing the statement may do so as an attorney-in-fact. Powers of attorney relating to the execution of the statement shall not be required to be provided to or filed with the Secretary of State.*
- (7) *If the Secretary of State has prescribed a mandatory form for a statement or other filing, then the statement or other filing shall be in or on the prescribed form.*
- (8) *In order to be filed, a statement shall be delivered to the office of the Secretary of State. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in*

*typewritten or printed form and not transmitted electronically, then the Secretary of State may require one (1) exact or conformed copy to be delivered with the statement.*

- (9) *When the statement is delivered to the office of the Secretary of State for filing, the correct filing fee and any penalty required by this subchapter or other law to be collected by the office of the Secretary of State therewith shall be paid or provision for payment made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, debit card, charge card or similar method. However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.*

SECTION 9. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State shall collect the following fees when the statements described in this subsection are delivered for filing:*

(a)	<i>Statement of Partnership Authority .....</i>	<i>\$40.00</i>
(b)	<i>Statement of Denial .....</i>	<i>\$20.00</i>
(c)	<i>Statement of Dissociation .....</i>	<i>\$20.00</i>
(d)	<i>Statement of Dissolution .....</i>	<i>\$40.00</i>
(e)	<i>Statement of Merger .....</i>	<i>\$40.00</i>
(f)	<i>Statement of Qualification .....</i>	<i>\$40.00</i>
(g)	<i>Amendment to a Statement of Qualification .....</i>	<i>\$40.00</i>
(h)	<i>Statement of Foreign Qualification .....</i>	<i>\$90.00</i>
(i)	<i>Reinstatement of a Statement of Qualification .....</i>	<i>\$100.00</i>
(j)	<i>Change of Registered Agent or Change of the Address of the Registered Office, or Both ..</i>	<i>\$10.00</i>
(k)	<i>Registered Agent's Statement of Change of Registered Office for Each Affected Partnership ..</i>	<i>\$10.00</i>
(l)	<i>Change of the Mailing Address of the Chief Executive Office .....</i>	<i>\$10.00</i>
(m)	<i>Application to Reserve a Name for Use by a Domestic or Foreign Partnership .....</i>	<i>\$15.00</i>
(n)	<i>Notice of the Transfer of a Name Reserved for Use by a Domestic or Foreign Partnership ..</i>	<i>\$15.00</i>
(o)	<i>Application for Registered Name .....</i>	<i>\$36.00</i>
(p)	<i>Application for Renewal of Registered Name .....</i>	<i>\$36.00</i>
(q)	<i>Annual report.....</i>	<i>\$15.00</i>
(r)	<i>Amendment to the annual report .....</i>	<i>\$10.00</i>
(s)	<i>All other filings .....</i>	<i>\$40.00</i>

- (2) *The Secretary of State shall collect the following fees for copying and certifying the copy of any filed statements relating to a domestic or foreign partnership:*

- (a) *Fifty cents (\$0.50) a page for copying; and*  
 (b) *Five dollars (\$5) for the certificate.*

SECTION 10. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, a statement shall be effective at the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing.*
- (2) *A statement may specify a delayed effective time and date, and if it does so and is filed pursuant to subsection (1) of this section, the statement shall become effective at the time and date specified. If a delayed effective date but no time is specified, the statement shall be effective at the close of business on*

*that date. A delayed effective date for a statement shall not be later than the ninetieth (90th) day after the date it is filed.*

- (3) *Except as provided in subsection (5) of Section 30 of this Act, a statement filed in accordance with this subchapter shall be effective regardless of a failure to file the statement with the county clerk.*

SECTION 11. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a statement delivered to the Secretary of State for filing satisfies the requirements of this subchapter, then the Secretary of State shall file it.*
- (2) *The Secretary of State shall file a statement by recording it as filed on the date and time of receipt. After filing a statement, the Secretary of State shall deliver to the domestic or foreign partnership or its representative a copy of the statement with an acknowledgment of the date and time of filing.*
- (3) *If the Secretary of State refuses to file a statement, then the Secretary of State shall return it to the domestic or foreign partnership or its representative within five (5) days after the statement was delivered, together with a brief, written explanation of the reason for the refusal.*
- (4) *The Secretary of State's duty to file statements under this section shall be ministerial. The filing or refusal to file a statement by the Secretary of State shall not:*
- (a) *Affect the validity or invalidity of the statement in whole or in part;*
  - (b) *Relate to the correctness or incorrectness of information contained in the statement; or*
  - (c) *Create a presumption that the statement is valid or invalid or that information contained in the statement is correct or incorrect.*

SECTION 12. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If the Secretary of State refuses to file a statement delivered for filing, then the domestic or foreign partnership, or in the case of a statement filed by an individual, that individual, may appeal the refusal to the Franklin Circuit Court. The appeal shall be commenced by petitioning the court to compel filing the statement and by attaching to the petition the statement and the Secretary of State's explanation of the refusal to file. The court may summarily order the Secretary of State to file the statement or take other action the court considers appropriate. The Court's final decision may be appealed as are other civil proceedings.*

SECTION 13. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A certificate attached to a copy of the statement filed by the Secretary of State, bearing his signature, which may be in facsimile, and the seal of this Commonwealth, shall be conclusive evidence that the original statement is on file with the Secretary of State. The only obligation of the Secretary of State is to certify that a statement is of record, and the Secretary of State is not obligated to certify as to any fact set forth in a statement of record.*

SECTION 14. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as authorized by subsections (2) and (3) of this section, the name of a partnership as set forth on a statement of qualification or statement of foreign qualification shall be distinguishable from any name of record with the Secretary of State.*
- (2) *No partnership may include in its name "corporation," "incorporated," or the abbreviations "corp." or "inc." and only a partnership that has filed a statement of qualification or a statement of foreign qualification may include in its name "limited" or the abbreviation "ltd."*
- (3) *A partnership may use the name, including the fictitious name, with any modification required by this section or Section 70 of this Act of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the partnership:*
- (a) *Has merged with the other business entity;*
  - (b) *Has been formed by reorganization of the other business entity; or*

- (c) *Has acquired all or substantially all of the assets, including the business name, of the other business entity.*
- (4) *This subchapter shall not control the use of assumed names.*
- (5) *The filing of a statement, including statement of qualification or statement of foreign qualification, under the particular name of the partnership shall not automatically prevent the use of that name or protect that name from use by other persons.*
- (6) *If a foreign limited liability partnership authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, then it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and amends its statement of foreign qualification to set forth that name.*

SECTION 15. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person may apply to the Secretary of State to reserve the exclusive use of a partnership name, including the fictitious name, for a limited liability partnership or for a foreign limited liability partnership whose partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for one (1) nonrenewable period of one hundred twenty (120) days.*
- (2) *The holder of a reserved partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.*
- (3) *The holder of a reserved partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.*

SECTION 16. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited liability partnership may register its name, or its name with any addition required by Section 70 of this Act, if the name is distinguishable upon the records of the Secretary of State as required under Section 14 of this Act.*
- (2) *A foreign limited liability partnership shall register its name, or its name with any addition required by Section 70 of this Act, by delivering to the Secretary of State for filing an application setting forth:*
- (a) *Its name, or its name with any addition required by Section 70 of this Act;*
  - (b) *The state or country and date of its organization; and*
  - (c) *A statement that the foreign partnership validly exists as a partnership under the laws of the jurisdiction of its formation.*
- (3) *The name shall be registered for the applicant's exclusive use upon the effective date of the application.*
- (4) *A foreign limited liability partnership whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application between October 1 and December 31 of the preceding year. The renewal application shall comply with the requirements of subsection (2) of this section and when filed shall renew the registration for the following calendar year.*
- (5) *A foreign limited liability partnership whose name registration is effective may thereafter qualify as a foreign limited liability partnership under the registered name or consent in writing to the use of that name by a partnership thereafter organized under this subchapter or by another foreign limited liability partnership thereafter authorized to transact business in this Commonwealth. The registration shall terminate when the domestic partnership is organized or the foreign limited liability partnership qualifies or consents to the qualification of another foreign limited liability partnership under the registered name.*

SECTION 17. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each limited liability partnership and each foreign limited liability partnership authorized to transact business in the Commonwealth pursuant to Sections 71 to 74 of this Act shall continuously maintain in this Commonwealth:*
- (a) *A registered office that may be the same as any of its places of business; and*
  - (b) *A registered agent who shall be:*
    - 1. *An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;*
    - 2. *A domestic corporation, domestic limited liability company, or domestic nonprofit corporation whose business office is identical with the registered office; or*
    - 3. *A foreign corporation, foreign limited liability company, or foreign nonprofit corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.*
- (2) *Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.*

SECTION 18. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited liability partnership or foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to Sections 71 to 74 of this Act may change its registered office or registered agent, or both, upon filing in the office of the Secretary of State a statement of change on a form supplied by the Secretary of State that sets forth:*
- (a) *The name of the partnership;*
  - (b) *The street address of its current registered office;*
  - (c) *If the current registered office is to be changed, the street address of the new registered office;*
  - (d) *The name of its current registered agent;*
  - (e) *If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent; and*
  - (f) *That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.*
- (2) *If a registered agent changes the street address of the registered agent's business office to another place within this Commonwealth, then the registered agent shall change the street address of the registered office of any domestic partnership that has filed a statement of qualification or foreign partnership of which the registered agent is a registered agent by notifying the domestic partnership that has filed a statement of qualification or foreign partnership in writing of the change, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the partnership has been notified of the change.*
- (3) *The change of address of the registered office or registered agent shall be effective on delivery of the statement of change to the Secretary of State. The appointment of a new registered agent shall be effective on delivery of the statement of change to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to subsection (2) of Section 17 of this Act.*

SECTION 19. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A registered agent may resign as registered agent by signing and delivering to the Secretary of State for filing the executed original and two (2) exact or conformed copies of a statement of resignation. The statement may also include a statement that the registered office is discontinued.*

- (2) *After filing the statement, the Secretary of State shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the limited liability partnership or foreign limited liability partnership at its principal office.*
- (3) *The agency appointment shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.*

SECTION 20. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The registered agent of a limited liability partnership or of a foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to Sections 71 to 74 of this Act shall be the partnership's agent for service of process, notice, or demand required or permitted by law to be served on the domestic limited liability partnership or foreign partnership.*
- (2) *If a limited liability partnership or foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to Sections 71 to 74 of this Act has no registered agent in this Commonwealth, or the registered agent cannot with reasonable diligence be served, then the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at its principal office. Service shall be perfected under this subsection at the earliest of:*
  - (a) *The date the partnership receives the mail;*
  - (b) *The date shown on the return receipt, if signed on behalf of the domestic or foreign partnership; or*
  - (c) *Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.*
- (3) *An agent named pursuant to subsection (1)(a)3. of Section 30 of this Act is not a registered agent for the partnership, and service of process is not accomplished against that agent.*
- (4) *This section does not prescribe the only means, or necessarily the required means, of serving a limited liability partnership or a foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to Sections 71 to 74 of this Act.*

SECTION 21. A NEW SECTION OF SUBCHAPTER 1 KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each limited liability partnership and each foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to Sections 71 to 74 of this Act shall file an annual report in the office of the Secretary of State on such form as shall be prescribed by the Secretary of State which contains:*
  - (a) *The name of the partnership and the state or other jurisdiction under whose laws it is formed;*
  - (b) *The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any; and*
  - (c) *The address of its registered office and the name of its registered agent in this Commonwealth.*
- (2) *Information in the annual report shall be current as of the date the annual report is executed on behalf of the partnership.*
- (3) *The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a partnership files a statement of qualification or statement of foreign qualification. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.*
- (4) *If an annual report does not contain the information required by this section, then the Secretary of State shall promptly notify the reporting partnership in writing and return the report to it for correction.*
- (5) *A limited liability partnership or foreign limited liability partnership may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on an appropriate form provided by the Secretary of State.*

SECTION 22. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may commence a proceeding to administratively dissolve a statement of qualification if:*
  - (a) *The limited liability partnership does not file its annual report with the Secretary of State within sixty (60) days after it is due;*
  - (b) *The limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or*
  - (c) *The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.*
- (2) *If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for the administrative dissolution of a statement of qualification, then he shall serve the partnership with written notice of his determination by mailing such notice by first class mail to the limited liability partnership at the street address of the partnership's chief executive office as set forth in the partnership's most recent annual report filed pursuant to Section 21 of this Act or, if none, that set forth in the statement of partnership qualification filed pursuant to Section 69 of this Act or the statement of foreign qualification filed by a foreign limited liability partnership pursuant to Section 72 of this Act.*
- (3) *If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the statement of qualification by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited liability partnership by mailing such certificate by first class mail to the partnership at its registered office. The administrative dissolution of a statement of qualification shall not terminate the authority of the registered agent of the partnership.*
- (4) *The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.*
- (5) *The partnership whose statement of qualification has been administratively dissolved may apply to the Secretary of State for reinstatement of the statement at any time after the effective date of the dissolution by filing an application that:*
  - (a) *Recites the name of the partnership, identifies the statement that was administratively dissolved and the effective date of that administrative dissolution;*
  - (b) *States that the ground or grounds for dissolution either did not exist or have been eliminated;*
  - (c) *States that the name of the partnership satisfies the requirements of Section 14 of this Act; and*
  - (d) *Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.*
- (6) *If the Secretary of State determines that the application contains the information required by subsection (5) of this section and that the information provided therein is correct, then the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its registered office. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.*
- (7) *If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then he shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its registered office. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The*

*partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the partnership's application for reinstatement and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.*

SECTION 23. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may commence a proceeding under subsection (2) of this section to revoke the statement of foreign qualification of a foreign limited liability partnership authorized to transact business in this Commonwealth if:
 
  - (a) *The foreign limited liability partnership does not file its annual report to the Secretary of State within sixty (60) days after it is due;*
  - (b) *The foreign limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;*
  - (c) *The foreign limited liability partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance; or*
  - (d) *The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of partnership records in the state or country under whose law the foreign limited liability partnership is formed stating that it has been dissolved or disappeared as the result of a merger, consolidation or conversion.**
- (2) *If the Secretary of State determines that one (1) or more grounds exist for the revocation of a statement of foreign qualification, then he shall serve the foreign limited liability partnership with written notice of his determination by mailing the notice by first class mail to the foreign limited liability partnership at the street address of the partnership's chief executive office as set forth in the most recent annual report filed pursuant to Section 21 of this Act or, if none, that set forth in the statement of foreign qualification filed pursuant to Section 72 of this Act.*
- (3) *If the foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, then the Secretary of State may revoke the foreign limited liability partnership's statement of foreign qualification by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign partnership by mailing the notice by first class mail to the foreign limited liability partnership at the street address of the partnership's chief executive office as set forth in the most recent annual report filed pursuant to Section 21 of this Act or, if none, that set forth in the statement of foreign qualification filed pursuant to Section 72 of this Act.*
- (4) *The authority of a foreign limited liability partnership to transact business in this Commonwealth shall cease on the date shown on the certificate revoking its statement of foreign qualification.*
- (5) *The Secretary of State's revocation of a foreign limited liability partnership's statement of foreign qualification shall be considered to appoint the Secretary of State the foreign limited liability partnership's agent for service of process in any proceeding based on the cause of action that arose during the time the foreign limited liability partnership was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign limited liability partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability partnership at its principal office shown in its most recent annual report or any subsequent communication received from the foreign limited liability partnership stating the current mailing address of its principal office, or, if none are on file, in its statement of foreign qualification.*
- (6) *Revocation of a foreign limited liability partnership's statement of foreign qualification shall not terminate the authority of the registered agent of the partnership.*
- (7) *A foreign limited liability partnership may appeal the Secretary of State's revocation of its statement of foreign qualification to the Franklin Circuit Court within thirty (30) days after service of the certificate of*

*revocation. The foreign limited liability partnership may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its statement of foreign qualification and the Secretary of State's certificate of revocation.*

- (8) *The court may summarily order the Secretary of State to reinstate the statement of foreign qualification or may take any other action the court considers appropriate.*
- (9) *The court's final decision may be appealed as in other civil proceedings.*

SECTION 24. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership is an entity distinct from its partners.*
- (2) *A limited liability partnership is a partnership and continues to be the same entity that existed before the filing of a statement of qualification under Section 69 of this Act.*

SECTION 25. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, the association of two (2) or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.*
- (2) *An association formed under a statute other than this subchapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this subchapter.*
- (3) *In determining whether a partnership is formed, the following rules apply:*
  - (a) *Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.*
  - (b) *The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.*
  - (c) *A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:*
    - 1. *Of a debt by installments or otherwise;*
    - 2. *For services as an independent contractor or of wages or other compensation to an employee;*
    - 3. *Of rent;*
    - 4. *Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;*
    - 5. *Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or*
    - 6. *For the sale of the goodwill of a business or other property by installments or otherwise.*

SECTION 26. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.*

SECTION 27. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Property is partnership property if acquired in the name of:*
  - (a) *The partnership; or*

- (b) *One (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.*
- (2) *Property is acquired in the name of the partnership by a transfer to:*
  - (a) *The partnership in its name; or*
  - (b) *One (1) or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.*
- (3) *Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.*
- (4) *Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.*

SECTION 28. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Subject to the effect of a statement of partnership authority under Section 30 of this Act:*

- (1) *Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority.*
- (2) *An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by all of the other partners.*

SECTION 29. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Partnership property may be transferred as follows:*
  - (a) *Subject to the effect of a statement of partnership authority under Section 30 of this Act, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.*
  - (b) *Partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.*
  - (c) *Partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.*
- (2) *A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 28 of this Act and:*
  - (a) *As to a subsequent transferee who gave value for property transferred under paragraph (a) or (b) of subsection (1) of this section, proves that the subsequent transferee had notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or*
  - (b) *As to a transferee who gave value for property transferred under subsection (1)(c) of this section, proves that the transferee had notice that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.*

- (3) *A partnership shall not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.*
- (4) *If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.*

SECTION 30. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership may file a statement of partnership authority, which:*
- (a) *Shall include:*
1. *The name of the partnership, which shall comply with Sections 14 and 70 of this Act;*
  2. *The street address of its chief executive office and of one (1) office in this Commonwealth, if any;*
  3. *The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section;*
  4. *The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership;*
  5. *The date any statement of qualification or statement of foreign qualification was previously filed by the partnership with the Secretary of State; and*
- (b) *May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.*
- (2) *The agent named in the statement of partnership authority pursuant to subsection (1)(a)3. of this section, if any, shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on written request for good cause shown.*
- (3) *If a filed statement of partnership authority is executed pursuant to subsection (3) of Section 5 of this Act and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, then the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.*
- (4) *Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:*
- (a) *Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without notice to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.*
- (b) *A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without having notice to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.*
- (5) *A person not a partner has knowledge of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.*
- (6) *Except as otherwise provided in subsections (4) and (5) of this section and Sections 50 and 56 of this Act, a person not a partner does not have notice of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.*

- (7) *Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement, or the most recent amendment to the statement of partnership authority expressly extending its term for not more than five (5) years from the date of the amendment, was filed with the Secretary of State.*

SECTION 31. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection (2) of Section 30 of this Act may file a statement of denial stating the name of the partnership, the date of filing of the statement of partnership authority and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections (4) and (5) of Section 30 of this Act.*

SECTION 32. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.*
- (2) *If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, then the partnership is liable for the loss.*

SECTION 33. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsections (2) and (3) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.*
- (2) *A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.*
- (3) *An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection (2) of Section 69 of this Act.*
- (4) *Subsection (3) of this section shall not affect the liability of a partner in a limited liability partnership for his own negligence, wrongful acts, or misconduct.*

SECTION 34. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership may sue and be sued in the name of the partnership.*
- (2) *An action may be brought against the partnership and, to the extent not inconsistent with Section 33 of this Act, any or all of the partners in the same action or in separate actions.*
- (3) *A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.*
- (4) *A judgment creditor of a partner shall not levy execution against the assets of a partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 33 of this Act and:*
- (a) *A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;*
- (b) *The partnership is a debtor in bankruptcy;*
- (c) *The partner has agreed that the creditor need not exhaust partnership assets;*

- (d) *A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or*
  - (e) *Liability is imposed on the partner by law or contract independent of the existence of the partnership.*
- (5) *This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 35 of this Act.*
  - (6) *A partner in a limited liability partnership is not a proper party to a proceeding against such a partnership solely by reason of being a partner.*

SECTION 35. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner in a partnership or with one or more persons not partners, then the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership and the purported partner would have been personally liable for obligations of the partnership under subsection (1) of Section 33 of this Act.*
- (2) *Subject to subsection (1) of this section, if the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, then the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, then the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, then the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.*
- (3) *Subject to subsection (1) of this section, if a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, then the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, then a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, then the person acting and the partners consenting to the representation are jointly and severally liable.*
- (4) *A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.*
- (5) *A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.*
- (6) *Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons.*

SECTION 36. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each partner is deemed to have an account that is:*
  - (a) *Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and*
  - (b) *Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.*
- (2) *Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.*

- (3) *A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.*
- (4) *A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.*
- (5) *A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.*
- (6) *Each partner has equal rights in the management and conduct of the partnership business.*
- (7) *A partner may use or possess partnership property only on behalf of the partnership.*
- (8) *A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.*
- (9) *A person may become a partner only with the consent of all of the partners.*
- (10) *A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.*
- (11) *This section does not affect the obligations of a partnership to other persons under Section 28 of this Act.*

SECTION 37. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution in kind from a partnership. A partner shall not be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership. A partner may be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership.*
- (2) *The property of a partnership subject to this subchapter shall not be subject to KRS 381.135(1)(a)1.*

SECTION 38. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership shall keep its books and records, if any, at its chief executive office.*
- (2) *A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.*
- (3) *Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:*
  - (a) *Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this subchapter; and*
  - (b) *On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.*
- (4) *The partnership agreement may impose reasonable limitations upon use of information obtained under this section and may define appropriate remedies, including liquidated damages, for the breach of any reasonable limitation on use.*

SECTION 39. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The fiduciary duties a partner owes to the partnership and the other partners include the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.*
- (2) *A partner's duty of loyalty to the partnership and the other partners includes, but is not limited to, the following:*
  - (a) *To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;*
  - (b) *To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and*
  - (c) *To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.*
- (3) *A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business includes, but is not limited to, acting with the care that a reasonable person in a like position would exercise under similar circumstances and in a manner that the partner believes to be in the best interests of the partnership.*
- (4) *A partner shall discharge the duties to the partnership and the other partners under this subchapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.*
- (5) *A partner does not violate a duty or obligation under this subchapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.*
- (6) *A partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.*
- (7) *This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.*

SECTION 40. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership causing harm to the partnership.*
- (2) *A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:*
  - (a) *Enforce the partner's rights under the partnership agreement;*
  - (b) *Enforce the partner's rights under this subchapter, including:*
    1. *The partner's rights under Section 36, 38, or 39 of this Act;*
    2. *The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 49 of this Act or enforce any other right under Sections 46 to 53 of this Act; or*
    3. *The partner's right to compel a dissolution and winding up of the partnership business under or enforce any other right under Sections 54 to 60 of this Act; or*
  - (c) *Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.*
- (3) *The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by KRS Chapter 413. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.*

SECTION 41. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, then the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.*
- (2) *If the partners, or the partners who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, then they are presumed to have agreed that the partnership will continue.*

SECTION 42. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Partnership property is owned by the partnership as an entity. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.*

SECTION 43. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.*

SECTION 44. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A transfer, in whole or in part, of a partner's transferable interest in the partnership:*
  - (a) *Is permissible;*
  - (b) *Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and*
  - (c) *Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.*
- (2) *A transferee of a partner's transferable interest in the partnership has a right:*
  - (a) *To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;*
  - (b) *To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and*
  - (c) *To seek under subsection (6) of Section 54 of this Act a judicial determination that it is equitable to wind up the partnership business.*
- (3) *In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.*
- (4) *Upon transfer, the transferor retains the rights and duties of a partner other than the transferable interest so transferred.*
- (5) *A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.*
- (6) *A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.*
- (7) *Limitations upon transfer set forth in Sections 42 to 45 of this Act or adopted by the partners in accordance with this subchapter are enforceable notwithstanding KRS 355.9-406 and 355.9-408.*

SECTION 45. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court order charging the transferable interest of a partner or of a partner's transferee shall be the sole remedy of a judgment creditor, who shall have no right under this subchapter to participate in the management of or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.*
- (2) *A charging order constitutes a right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.*
- (3) *At any time before foreclosure, an interest charged may be redeemed:*
  - (a) *By the judgment debtor;*
  - (b) *With property other than partnership property, by one or more of the other partners; or*
  - (c) *With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.*
- (4) *This subchapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.*
- (5) *This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.*

SECTION 46. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partner is dissociated from a partnership upon the occurrence of any of the following events:*

- (1) *When the partnership has notice of the partner's express will to withdraw as a partner unless a later date is specified by the partner in the notice;*
- (2) *An event agreed to in the partnership agreement as causing the partner's dissociation;*
- (3) *The partner's expulsion pursuant to the partnership agreement;*
- (4) *The partner's expulsion by the unanimous vote of the other partners if:*
  - (a) *It is unlawful to carry on the partnership business with that partner;*
  - (b) *There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes that has not been foreclosed, or a court order charging the partner's interest, which has not been foreclosed;*
  - (c) *Within ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or*
  - (d) *A partnership that is a partner has been dissolved and its business is being wound up;*
- (5) *On application by the partnership or another partner, the partner's expulsion by judicial determination because:*
  - (a) *The partner engaged in wrongful conduct that adversely and materially affected the partnership business;*
  - (b) *The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 39 of this Act; or*

- (c) *The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;*
- (6) *The partner's:*
  - (a) *Becoming a debtor in bankruptcy;*
  - (b) *Executing an assignment for the benefit of creditors;*
  - (c) *Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or*
  - (d) *Failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;*
- (7) *In the case of a partner who is an individual:*
  - (a) *The partner's death;*
  - (b) *The appointment of a guardian or general conservator for the partner; or*
  - (c) *A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;*
- (8) *In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;*
- (9) *In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or*
- (10) *Termination of any other partner who is an entity.*

SECTION 47. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subsection (1) of Section 46 of this Act.*
- (2) *A partner's dissociation is wrongful only if any of the following apply:*
  - (a) *It is in breach of an express provision of the partnership agreement; or*
  - (b) *In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:*
    - 1. *The partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under subsections (6) to (10) of Section 46 of this Act or wrongful dissociation under this subsection;*
    - 2. *The partner is expelled by judicial determination under subsection (5) of Section 46 of this Act;*
    - 3. *The partner is dissociated by becoming a debtor in bankruptcy; or*
    - 4. *In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.*
- (3) *A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.*

SECTION 48. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a partner's dissociation results in a dissolution and winding up of the partnership business, then Sections 54 to 60 of this Act apply; otherwise, Sections 49 to 53 of this Act apply.*
- (2) *Upon a partner's dissociation, the dissociating partner's:*
  - (a) *Right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 56 of this Act;*
  - (b) *Duty of loyalty under subsection (2)(c) of Section 39 of this Act terminates; and*
  - (c) *Duty of loyalty under paragraphs (a) and (b) of subsection (2) of Section 39 of this Act and duty of care under subsection (3) of Section 39 of this Act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 56 of this Act.*

SECTION 49. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 54 of this Act, then the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.*
- (2) *The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (2) of Section 60 of this Act if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.*
- (3) *Damages for wrongful dissociation under subsection (2) of Section 47 of this Act, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.*
- (4) *A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 50 of this Act.*
- (5) *If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, then the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.*
- (6) *If a deferred payment is authorized under subsection (8) of this section, then the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.*
- (7) *The payment or tender required by subsection (5) or (6) of this section shall be accompanied by the following:*
  - (a) *A statement of partnership assets and liabilities as of the date of dissociation;*
  - (b) *The latest available partnership balance sheet and income statement, if any;*
  - (c) *An explanation of how the estimated amount of the payment was calculated; and*
  - (d) *Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3) of this section, or other terms of the obligation to purchase.*
- (8) *A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.*

- (9) *A dissociated partner may maintain an action against the partnership, pursuant to subsection (2)(b)2. of Section 40 of this Act, to determine the buyout price of that partner's interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action shall be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of this section, then the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.*

SECTION 50. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *For two (2) years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Sections 61 to 68 of this Act, is bound by an act of the dissociated partner which would have bound the partnership under Section 28 of this Act before dissociation only if at the time of entering into the transaction the other party:*
- (a) *Reasonably believed that the dissociated partner was then a partner;*
  - (b) *Did not have notice of the partner's dissociation; and*
  - (c) *Is not deemed to have knowledge under subsection (5) of Section 30 of this Act or notice under subsection (3) of Section 52 of this Act.*
- (2) *A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section.*

SECTION 51. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.*
- (2) *A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Sections 61 to 68 of this Act, within two (2) years after the partner's dissociation, only if the partner is liable for the obligation under Section 33 of this Act and at the time of entering into the transaction the other party:*
- (a) *Reasonably believed that the dissociated partner was then a partner;*
  - (b) *Did not have notice of the partner's dissociation; and*
  - (c) *Is not deemed to have knowledge under subsection (5) of Section 30 of this Act or notice under subsection (3) of Section 52 of this Act.*
- (3) *By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.*
- (4) *A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.*

SECTION 52. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.*

- (2) *A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections (4) and (5) of Section 30 of this Act.*
- (3) *For the purposes of subsection (1)(c) of Section 50 of this Act and subsection (2)(c) of Section 51 of this Act, a person not a partner has notice of the dissociation ninety (90) days after the statement of dissociation is filed.*

SECTION 53. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Continued use of a partnership name, or a dissociated partner's name as part of the partnership name, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.*

SECTION 54. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:*

- (1) *In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections (2) to (10) of Section 46 of this Act, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;*
- (2) *In a partnership for a definite term or particular undertaking:*
  - (a) *Within ninety (90) days after a partner's dissociation by death or otherwise under subsections (6) to (10) of Section 46 of this Act or wrongful dissociation under subsection (2) of Section 47 of this Act, the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to subsection (2)(b)1. of Section 47 of this Act constitutes the expression of that partner's will to wind up the partnership business;*
  - (b) *The express will of all of the partners to wind up the partnership business; or*
  - (c) *The expiration of the term or the completion of the undertaking;*
- (3) *An event agreed to in the partnership agreement resulting in the winding up of the partnership business;*
- (4) *An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;*
- (5) *On application by a partner, a judicial determination that:*
  - (a) *The economic purpose of the partnership is likely to be unreasonably frustrated;*
  - (b) *Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or*
  - (c) *It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or*
- (6) *On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:*
  - (a) *After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or*
  - (b) *At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.*

SECTION 55. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.*

- (2) *At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:*
- (a) *The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and*
  - (b) *The rights of a third party accruing under subsection (1) of Section 57 of this Act or arising out of conduct in reliance on the dissolution before the third party has notice of the waiver shall not be adversely affected.*

SECTION 56. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the Circuit Court for the county in which the registered office is located or, if none, the Franklin Circuit Court, for good cause shown, may order judicial supervision of the winding up.*
- (2) *The legal representative of the last surviving partner may wind up a partnership's business.*
- (3) *A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 60 of this Act, settle disputes by mediation or arbitration, and perform other necessary acts.*

SECTION 57. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Subject to Section 58 of this Act, a partnership is bound by a partner's act after dissolution that:*

- (1) *Is appropriate for winding up the partnership business; or*
- (2) *Would have bound the partnership under Section 28 of this Act before dissolution, if the other party to the transaction did not have notice of the dissolution.*

SECTION 58. A NEW SECTION SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership, that the partnership has dissolved and is winding up its business, and the date of dissolution.*
- (2) *A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection (4) of Section 30 of this Act and is a limitation on authority for the purposes of subsection (5) of Section 30 of this Act.*
- (3) *For the purposes of Sections 28 and 57 of this Act, a person not a partner has notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety (90) days after it is filed.*
- (4) *After filing a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections (4) and (5) of Section 30 of this Act in any transaction, whether or not the transaction is appropriate for winding up the partnership business.*

SECTION 59. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section and Section 33 of this Act, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 57 of this Act.*

- (2) *A partner who, with knowledge of the dissolution, incurs a partnership liability under subsection (2) of Section 57 of this Act by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.*

SECTION 60. A NEW SECTION SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.*
- (2) *Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 33 of this Act.*
- (3) *If a partner fails to contribute the full amount required under subsection (2) of this section, then all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 33 of this Act. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 33 of this Act.*
- (4) *After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 33 of this Act.*
- (5) *The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.*
- (6) *An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.*

SECTION 61. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 61 to 68 of this Act:*

- (1) *"General partner" means a partner in a partnership and a general partner in a limited partnership;*
- (2) *"Limited partner" means a limited partner in a limited partnership;*
- (3) *"Limited partnership" means a limited partnership created under the Kentucky Uniform Limited Partnership Act (2006), predecessor law, or comparable law of another jurisdiction; and*
- (4) *"Partner" includes both a general partner and a limited partner.*

SECTION 62. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership may be converted to a limited partnership pursuant to this section.*
- (2) *The terms and conditions of a conversion of a partnership to a limited partnership shall be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.*
- (3) *After the conversion is approved by the partners, the partnership shall cancel any statement of qualification, statement of partnership authority or certificate of assumed name filed with the Secretary of State and file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. In addition to all other requirements, the certificate shall include:*
- (a) *A statement that the partnership was converted to a limited partnership from a partnership;*

- (b) *Its former name; and*
  - (c) *A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.*
- (4) *The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.*
  - (5) *A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, then the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Subchapter 2 of this chapter.*
  - (6) *A partnership may be converted to a limited liability company as provided in KRS 275.370.*

SECTION 63. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership may be converted to a partnership pursuant to this section.*
- (2) *Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership shall be approved by all of the partners.*
- (3) *After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership and any certificate of assumed name filed with the Secretary of State.*
- (4) *The conversion takes effect when the certificate of limited partnership is canceled.*
- (5) *A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 33 of this Act, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.*

SECTION 64. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership or limited partnership that has been converted pursuant to Sections 61 to 68 of this Act is for all purposes the same entity that existed before the conversion.*
- (2) *When a conversion takes place:*
  - (a) *All property and contract rights owned by, and all rights, privileges, and immunities of, the converting organization shall remain vested in the converted organization without assignment, reversions, or impairment and without the converting organization having been dissolved;*
  - (b) *All obligations of the converting partnership organization shall continue as obligations of the converted organization;*
  - (c) *An action or proceeding pending against the converting partnership organization may be continued as if the organization had not occurred, and the name of the converted organization may be substituted in any pending action or proceeding for the name of the converting organization;*
  - (d) *Any written partnership agreement of the converted partnership or limited partnership shall be binding upon each person who becomes a partner in the converted partnership or limited partnership; and*
  - (e) *Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.*
- (3) *Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a conversion.*

SECTION 65. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Pursuant to a plan of merger approved as provided in subsection (3) of this section, a partnership may be merged with one or more partnerships or limited partnerships.*
- (2) *The plan of merger shall set forth:*
  - (a) *The name of each partnership or limited partnership that is a party to the merger;*
  - (b) *The name of the surviving entity into which the other partnerships or limited partnerships will merge;*
  - (c) *Whether the surviving entity is a partnership or a limited partnership and the status of each partner;*
  - (d) *The terms and conditions of the merger;*
  - (e) *The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and*
  - (f) *The street address of the surviving entity's chief executive office.*
- (3) *The plan of merger shall be approved:*
  - (a) *In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and*
  - (b) *In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.*
- (4) *After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.*
- (5) *The merger takes effect on the later of:*
  - (a) *The approval of the plan of merger by all parties to the merger, as provided in subsection (3) of this section;*
  - (b) *The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or*
  - (c) *Subject to Section 10 of this Act, any effective date specified in the plan of merger.*

SECTION 66. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *When a merger takes effect:*
  - (a) *The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;*
  - (b) *All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;*
  - (c) *All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and*
  - (d) *An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.*
- (2) *The Secretary of State of this Commonwealth is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon*

*receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.*

- (3) *A partner of the surviving partnership or limited partnership is liable for:*
- (a) *All obligations of a party to the merger for which the partner was personally liable before the merger;*
  - (b) *All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and*
  - (c) *Except as otherwise provided in Section 33 of this Act, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.*
- (4) *If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, then the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 60 of this Act or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.*
- (5) *A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 49 of this Act or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under Section 50 of this Act by an act of a general partner dissociated under this subsection, and the partner is liable under Section 51 of this Act for transactions entered into by the surviving entity after the merger takes effect.*
- (6) *Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a merger.*

SECTION 67. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After a merger, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.*
- (2) *A statement of merger shall contain:*
- (a) *The name of each partnership or limited partnership that is a party to the merger;*
  - (b) *The name of the surviving entity into which the other partnerships or limited partnership were merged;*
  - (c) *The street address of the surviving entity's chief executive office and of an office in this Commonwealth, if any;*
  - (d) *Whether the surviving entity is a partnership or a limited partnership; and*
  - (e) *The effective date of this merger as determined in accordance with subsection (5) of Section 65 of this Act.*
- (3) *Except as otherwise provided in subsection (4) of this section, for the purposes of Section 29 of this Act, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.*
- (4) *For the purposes of Section 29 of this Act, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.*
- (5) *A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (3) of Section 5 of this Act, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (2) of this section, operates*

*with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4) of this section.*

- (6) *A limited partnership party to a merger with a partnership shall file with the Secretary of State such documents as are provided for in the law governing the limited partnership.*

SECTION 68. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Sections 61 to 68 of this Act are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.*

SECTION 69. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partnership may become a limited liability partnership pursuant to this section.*
- (2) *The terms and conditions on which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.*
- (3) *After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing with the Secretary of State a statement of qualification. The statement shall contain:*
- (a) *The name of the partnership, which shall comply with Sections 14 and 70 of this Act;*
- (b) *The address of the partnership's chief executive office and, if different, the street address of an office in this Commonwealth, if any;*
- (c) *The street address of the partnership's registered office, and the name of its registered agent at that office;*
- (d) *A statement that the partnership elects to be a limited liability partnership; and*
- (e) *The date any statement of partnership authority was previously filed with the Secretary of State.*
- (4) *The status of a partnership as a limited liability partnership remains effective, regardless of changes in the partnership, until the statement of qualification is canceled pursuant to subsection (4) of Section 5 of this Act or administratively dissolved pursuant to Section 22 of this Act.*
- (5) *The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.*
- (6) *The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.*
- (7) *An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. An amendment to a statement of qualification shall include the date of filing of the statement being amended and all information required in an initial statement of qualification. A cancellation of a statement of qualification shall include the name of the partnership and the date of filing of the statement of qualification.*

SECTION 70. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The name of a limited liability partnership shall end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."*

SECTION 71. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the Constitution of this Commonwealth, the law of the jurisdiction in which a foreign limited liability partnership is formed governs relations among the partners, between the partners and the partnership, and the liability of partners for obligations of the partnership. This subchapter does not*

*authorize this Commonwealth to regulate the organization or internal affairs of a foreign limited liability partnership authorized to transact business in this Commonwealth.*

- (2) *A foreign limited liability partnership shall not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this Commonwealth.*
- (3) *No foreign partnership, including a foreign limited liability partnership that has filed a statement of foreign qualification, may engage in any business or exercise any power that a domestic partnership is forbidden to exercise or engage in by the laws of this Commonwealth.*

SECTION 72. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Before transacting business in this Commonwealth, a foreign limited liability partnership shall file a statement of foreign qualification. The statement shall contain:*
  - (a) *The name of the foreign limited liability partnership which satisfies the requirements of Section 14 of this Act and, if applicable, subsection (3) of this section, and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";*
  - (b) *The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any;*
  - (c) *The street address of the partnership's registered office within this Commonwealth, and the name of its registered agent at that office; and*
  - (d) *Its jurisdiction of organization.*
- (2) *The status of a partnership as a foreign limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of Section 5 of this Act or revoked pursuant to Section 23 of this Act.*
- (3) *If the name of a foreign limited liability partnership is not distinguishable upon the records of the Secretary of State, then it may file a statement of foreign qualification using a fictitious name that is distinguishable upon the records of the Secretary of State, in which instance the statement of foreign qualification shall be filed under the fictitious name, shall recite that the partnership has filed the statement of foreign qualification under a fictitious name, and shall include in the statement its real name in its jurisdiction of organization.*
- (4) *A statement of foreign qualification shall authorize the foreign limited liability partnership to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the statement.*
- (5) *A foreign limited liability partnership, having filed a statement of foreign qualification, shall have the same as, but no greater rights than, and shall have the same, but no greater privileges than, and except as otherwise provided by this subchapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a limited liability partnership.*

SECTION 73. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited liability partnership transacting business in this Commonwealth shall not maintain an action or proceeding in this Commonwealth unless it has in effect a statement of foreign qualification.*
- (2) *The successor to a foreign limited liability partnership that transacted business in this Commonwealth without having filed a statement of foreign qualification and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign limited liability partnership or its successor files a statement of foreign qualification.*
- (3) *A court may stay a proceeding commenced by a foreign limited liability partnership, its successor, or assignee, until it determines whether the foreign limited liability partnership or its successor is obligated to have filed a statement of foreign qualification. If it so determines, then the court may further stay the proceeding until the limited liability partnership or its successor files the statement of foreign qualification.*

- (4) *The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.*
- (5) *A limitation on personal liability of a partner is not waived solely by transacting business in this Commonwealth without having filed and having in effect a statement of foreign qualification.*
- (6) *A foreign limited liability partnership transacting business in this Commonwealth without filing and having in effect a statement of foreign qualification shall be deemed to have appointed the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this Commonwealth.*
- (7) *A foreign limited liability partnership shall be liable for a civil penalty of two dollars (\$2) for each day, but not to exceed a total of five hundred dollars (\$500) for each year, it transacts business in this Commonwealth without having filed a statement of foreign qualification. The Attorney General may collect all penalties due under this subsection.*

SECTION 74. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Activities of a foreign limited liability partnership which do not constitute transacting business for the purposes of Sections 69 to 73 of this Act include:*
  - (a) *Maintaining, defending, or settling an action or proceeding;*
  - (b) *Holding meetings of its partners or carrying on any other activity concerning its internal affairs;*
  - (c) *Maintaining bank accounts;*
  - (d) *Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;*
  - (e) *Selling through independent contractors;*
  - (f) *Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;*
  - (g) *Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;*
  - (h) *Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;*
  - (i) *Conducting an isolated transaction that is completed within thirty (30) days and is not one (1) in the course of repeated transactions of a like nature;*
  - (j) *Owning, without more, real or personal property; or*
  - (k) *Transacting business in interstate commerce.*
- (2) *For purposes of Sections 71 to 75 of this Act, the ownership in this Commonwealth of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this Commonwealth.*
- (3) *The list of activities in subsection (1) of this section shall not be considered exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership or any partner therein to service of process, taxation, or regulation under any other law of this Commonwealth.*

SECTION 75. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this Commonwealth in violation of this subchapter.*

SECTION 76. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among the states enacting it.*

SECTION 77. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*This subchapter may be cited as the Kentucky Revised Uniform Partnership Act (2006).*

SECTION 78. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If any provision of this subchapter or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.*

SECTION 79. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *This subchapter governs only a partnership:*
  - (a) *Formed on or after the effective date of this subchapter, except a partnership that is continuing the business of a dissolved partnership under KRS 362.350; and*
  - (b) *Formed prior to the effective date of this subchapter that elects, as provided by subsection (2) of this section, to be governed by this subchapter.*
- (2) *A partnership formed prior to the effective date of Sections 1 to 80 of this Act voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this subchapter. The filing by the partnership of a statement pursuant to this section shall constitute an election to be bound by this subchapter. The provisions of this subchapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who has engaged in business with the partnership within one (1) year before the partnership's election to be governed by this subchapter only if the third party has notice of the partnership's election to be governed by this subchapter.*

SECTION 80. A NEW SECTION SUBCHAPTER 1 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*This subchapter does not affect an action or proceeding commenced or right accrued before this subchapter takes effect.*

SECTION 81. SUBCHAPTER 2 OF KRS CHAPTER 362 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter, unless the context otherwise requires:*

- (1) *"Certificate of limited partnership" means the certificate required by Section 105 of this Act or filed under KRS 362.415 and includes the certificate as amended or restated;*
- (2) *"Contribution" means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner;*
- (3) *"Debtor in bankruptcy" means a person that is the subject of:*
  - (a) *An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or*
  - (b) *A comparable order under federal, state, or foreign law governing insolvency;*
- (4) *"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;*
- (5) *"Designated office" means:*
  - (a) *With respect to a limited partnership, the office that a limited partnership is required to designate and maintain under Section 93 of this Act; and*
  - (b) *With respect to a foreign limited partnership, its principal office;*

- (6) *"Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee;*
- (7) *"Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;*
- (8) *"Entity" means a corporation, foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated associations, business or statutory trust, estate, partnership, limited partnership, trust, two (2) or more persons having a joint or common economic interest, and a state, national, or foreign government;*
- (9) *"Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this Commonwealth and required by those laws to have one (1) or more general partners and one (1) or more limited partners and includes a foreign limited liability limited partnership;*
- (10) *"Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to subsection (3) of Section 124 of this Act;*
- (11) *"General partner" means:*
- (a) *With respect to a limited partnership, a person that:*
1. *Has been admitted as a general partner under Section 121 of this Act; or*
  2. *Was a general partner in a limited partnership when that limited partnership became subject to this subchapter under subsections (1) and (2) of Section 192 of this Act; and*
- (b) *With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership;*
- (12) *"Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership;*
- (13) *"Limited partner" means:*
- (a) *With respect to a limited partnership, a person that:*
1. *Has been admitted as a limited partner under Section 115 of this Act; or*
  2. *Was a limited partner in a limited partnership when that limited partnership became subject to this subchapter under subsections (1) and (2) of Section 192 of this Act; and*
- (b) *With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership;*
- (14) *"Limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one (1) or more general partners and one (1) or more limited partners, which is formed under this subchapter by two (2) or more persons or becomes subject to this subchapter under subsections (1) and (2) of Section 192 of this Act. The term includes a limited liability limited partnership;*
- (15) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;*
- (16) *"Partner" means a limited partner or general partner;*
- (17) *"Partnership agreement" means the partners' agreement, oral, implied, in record form, or in any combination, concerning the limited partnership. The term includes the agreement as amended;*
- (18) *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;*

- (19) *"Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this Commonwealth;*
- (20) *"Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;*
- (21) *"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;*
- (22) *"Required information" means the information that a limited partnership is required to maintain under Section 90 of this Act;*
- (23) *"Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature;*
- (24) *"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;*
- (25) *"Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law;*
- (26) *"Transferable interest" means the partner's right to receive distributions; and*
- (27) *"Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.*

SECTION 82. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person knows a fact if the person has actual knowledge of it.*
- (2) *Except as otherwise provided in subsections (3) and (4) of this section, a person has notice of a fact if the person:*
  - (a) *Knows of it;*
  - (b) *Has received a notification of it; or*
  - (c) *Has reason to know it exists from all of the facts known to the person at the time in question.*
- (3) *Subject to subsection (4) of this section, a certificate of limited partnership on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners, but is not notice of any other fact.*
- (4) *A person has notice of:*
  - (a) *Another person's dissociation as a general partner ninety (90) days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or ninety (90) days after the effective date of a statement of dissociation pertaining to that other person, whichever occurs first;*
  - (b) *A limited partnership's dissolution ninety (90) days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;*
  - (c) *A limited partnership's cancellation ninety (90) days after the effective date of a statement of cancellation;*
  - (d) *A limited partnership's conversion under Sections 176 to 188 of this Act ninety (90) days after the effective date of the articles of conversion; and*
  - (e) *A merger under Sections 176 to 188 of this Act ninety (90) days after the effective date of the articles of merger.*
- (5) *A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.*
- (6) *A person receives a notification when the notification:*

- (a) *Comes to the person's attention; or*
  - (b) *Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.*
- (7) *Except as otherwise provided in subsection (8) of this section, an entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the entity had exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity, and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction, and that the transaction would be materially affected by the information.*
- (8) *A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge by, notice to, or receipt of a notification by the limited partnership.*

SECTION 83. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.*
- (2) *A limited partnership may be organized under this subchapter for any lawful purpose except for rendering a professional service.*
- (3) *A limited partnership has a perpetual duration.*

SECTION 84. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by an actual or threatened injury to the limited partnership, breach of the partnership agreement, or violation of a duty to the partnership.*

SECTION 85. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The law of this Commonwealth governs relations among the partners of a limited partnership, and between the partners and the limited partnership, and the liability of partners as partners for an obligation of a limited partnership.*

SECTION 86. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless displaced by particular provisions of this subchapter, the principles of law and equity supplement this subchapter.*
- (2) *If an obligation to pay interest arises under this subchapter and the rate is not specified, then the rate is that specified in KRS 360.010.*
- (3) *Subject to subsection (2) of Section 89 of this Act, it shall be the public policy of the Commonwealth in this subchapter to give maximum effect to the principles of freedom of contract and the enforceability of partnership agreements. Unless displaced by particular provisions of this subchapter, the principles of law and equity shall supplement this subchapter. Although this subchapter is in derogation of the common law, the rules of construction that require strict construction of statutes that are in derogation of common law shall not apply to its provisions. Except as otherwise expressly provided herein, this subchapter shall not be construed to impair the obligation of any contract existing when this subchapter, or any amendment*

*thereto, becomes effective, nor to affect any action or proceeding begun or right accrued before this subchapter or any amendment thereto takes effect.*

SECTION 87. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The name of a limited partnership may contain the name of any partner.*
- (2) *The name of a limited partnership that is not a limited liability limited partnership shall contain the word "limited" or the abbreviation "Ltd." or the phrase "limited partnership" or the abbreviation "L.P." or "LP" and it shall not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."*
- (3) *The name of a limited partnership that is a limited liability limited partnership shall contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and it shall not contain only "limited partnership" or the abbreviation "L.P." or "LP."*
- (4) *Unless authorized by subsection (5) or (6) of this section, the name of a limited partnership shall be distinguishable upon the records of the Secretary of State from any name of record with the Secretary of State.*
- (5) *A limited partnership may use the name, including the fictitious name, with any modification required by this section or Section 165 of this Act of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the limited partnership:*
  - (a) *Has merged with the other business entity;*
  - (b) *Has been formed by reorganization of the other business entity; or*
  - (c) *Has acquired all or substantially all of the assets, including the business name, of the other business entity.*
- (6) *This subchapter shall not control the use of assumed names.*
- (7) *The filing of a certificate of limited partnership under the particular name of the limited partnership shall not automatically prevent the use of that name or protect that name from use by other persons.*
- (8) *Subject to Section 165 of this Act, this section applies to any foreign limited partnership transacting business in this Commonwealth, authorized to transact business in this Commonwealth, or applying for such authorization.*

SECTION 88. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person may apply to the Secretary of State to reserve the exclusive use of a limited partnership name, including the fictitious name for a foreign limited partnership whose limited partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the limited partnership name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for one (1) nonrenewable period of one hundred twenty (120) days.*
- (2) *The holder of a reserved limited partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.*
- (3) *The holder of a reserved limited partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.*

SECTION 89. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this subchapter governs relations among the partners and between the partners and the partnership.*

- (2) *The partnership agreement shall not:*
- (a) *Vary a limited partnership's power under Section 84 of this Act to sue, be sued, and defend in its own name;*
  - (b) *Vary the law applicable to a limited partnership under Section 85 of this Act;*
  - (c) *Vary the requirements of Section 108 of this Act;*
  - (d) *Vary the information required under KRS 141.407 or unreasonably restrict the right to information under Sections 118 and 127 of this Act, but the partnership agreement may provide a different location for the maintenance of the books and records, and impose reasonable limitations on the availability and use of information obtained under those sections, and may define appropriate remedies, including liquidated damages, for a breach of any reasonable limitation on use;*
  - (e) *Eliminate the duty of loyalty under Section 128 of this Act, but the partnership agreement may:*
    - 1. *Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and*
    - 2. *Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;*
  - (f) *Unreasonably reduce the duty of care under subsection (3) of Section 128 of this Act;*
  - (g) *Eliminate the obligation of good faith and fair dealing under subsection (2) of Section 119 and subsection (4) of Section 128 of this Act, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;*
  - (h) *Vary the power of a person to dissociate as a general partner under subsection (1) of Section 141 of this Act, except to require that the notice under subsection (1) of Section 140 of this Act be in a record;*
  - (i) *Vary the right of a court to decree dissolution in the circumstances specified in Section 150 of this Act;*
  - (j) *Vary the requirement to wind up the partnership's business as specified in Section 151 of this Act;*
  - (k) *Unreasonably restrict the right to bring an action under Sections 171 to 175 of this Act; or*
  - (l) *Restrict the right of a partner under subsection (1) of Section 185 of this Act to consent to a merger or conversion or the right of a general partner under subsection (2) of Section 185 of this Act to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership.*
- (3) *If a written partnership agreement contains a provision to the effect that any amendment to the partnership agreement must be in writing and adopted in accordance with the provisions of the partnership agreement, that provision shall be enforceable in accordance with its terms, and any agreement among the partners concerning the partnership which is not in writing and adopted in accordance with the provisions of the partnership agreement shall not be part of the partnership agreement.*

SECTION 90. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A limited partnership shall maintain at its designated office the following information:*

- (1) *A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;*
- (2) *A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;*
- (3) *A copy of any filed articles of conversion or merger;*

- (4) *A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;*
- (5) *A copy of any partnership agreement made in record form and any amendment made in record form to any partnership agreement;*
- (6) *A copy of any financial statement of the limited partnership for the three (3) most recent years;*
- (7) *A copy of the three (3) most recent annual reports delivered by the limited partnership to the Secretary of State pursuant to Section 114 of this Act;*
- (8) *A copy of any record made by the limited partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this subchapter or the partnership agreement; and*
- (9) *Unless contained in a partnership agreement in record form, a record stating:*
  - (a) *The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;*
  - (b) *The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;*
  - (c) *For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and*
  - (d) *Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.*

SECTION 91. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the limited partnership and, subject to other law, has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.*

SECTION 92. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this subchapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations and restrictions under this subchapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations and restrictions under this subchapter and the partnership agreement for limited partners.*

SECTION 93. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership shall designate and continuously maintain in this Commonwealth:*
  - (a) *A designated office, which need not be a place of its activity in this Commonwealth; and*
  - (b) *A registered office and agent for service of process at that office.*
- (2) *A foreign limited partnership shall designate and continuously maintain in this Commonwealth a registered office and agent for service of process at that office.*
- (3) *A registered agent shall be:*
  - (a) *An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;*
  - (b) *A domestic corporation, domestic limited liability company, or domestic nonprofit corporation whose business office is identical with the registered office; or*

- (c) *A foreign corporation, foreign limited liability company, or foreign nonprofit corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.*
- (4) *Unless the registered agent signs the record making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.*

SECTION 94. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to change its designated office, registered office or agent for service of process, a limited partnership or a foreign limited partnership shall deliver to the Secretary of State for filing a statement of change containing:*
- (a) *The name of the limited partnership or foreign limited partnership;*
  - (b) *The street and mailing address of its current designated office;*
  - (c) *The address of its registered office and the name of its registered agent at that office in this Commonwealth;*
  - (d) *If the current designated office is to be changed, the street address of the new designated office;*
  - (e) *If the current registered office is to be changed, the street address of the new registered office;*
  - (f) *If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent; and*
  - (g) *That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.*
- (2) *If a registered agent changes the street address of the registered agent's business office to another place within this Commonwealth, then the registered agent shall change the street address of the registered office of any limited partnership or foreign limited partnership of which the registered agent is a registered agent by notifying the limited partnership or foreign limited partnership in writing of the change, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited partnership or foreign limited partnership has been notified of the change.*
- (3) *The change of address of the registered office or registered agent shall be effective on delivery of the statement to the Secretary of State. The appointment of a new registered agent shall be effective on delivery of the statement to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted the appointment.*
- (4) *Any statement of change of a designated office or the name or address of an agent for service of process shall be made on a form provided by the Secretary of State.*

SECTION 95. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A registered agent may resign as registered agent by signing and delivering to the Secretary of State for filing the executed original and two (2) exact or conformed copies of a statement of resignation. The statement may also include a statement that the registered office is also discontinued.*
- (2) *After filing the statement, the Secretary of State shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the limited partnership or foreign limited partnership at its designated office.*
- (3) *The agency appointment shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.*

SECTION 96. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *An agent for service of process appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.*
- (2) *If a limited partnership or foreign limited partnership fails to appoint or maintain an agent for service of process in this Commonwealth or the agent for service of process cannot with reasonable diligence be found at the agent's address, then the Secretary of State is an agent of the limited partnership or foreign limited partnership upon which process, notice, or demand may be served.*
- (3) *Service of any process, notice, or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the Secretary of State, then the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the limited partnership or foreign limited partnership at its designated office.*
- (4) *Service is effected under subsection (3) of this section at the earliest of:*
  - (a) *The date the limited partnership or foreign limited partnership receives the process, notice, or demand;*
  - (b) *The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership; or*
  - (c) *Five (5) days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.*
- (5) *The Secretary of State shall keep a record of each process, notice, and demand served pursuant to this section and record the time of and the action taken regarding the service.*
- (6) *This section does not affect the right to serve process, notice, or demand in any other manner provided by law.*

SECTION 97. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Action requiring the consent of partners under this subchapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.*

SECTION 98. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may prescribe and furnish on request forms for:*
  - (a) *A certificate of existence or authorization;*
  - (b) *An application for a certificate of authority;*
  - (c) *An application for a certificate of withdrawal;*
  - (d) *A statement of change of registered office or registered agent;*
  - (e) *A statement of change of designated office;*
  - (f) *Application to reserve a name;*
  - (g) *Application to cancel the reservation of a name;*
  - (h) *Resignation of a registered agent;*
  - (i) *The annual report;*
  - (j) *An amendment to the annual report; and*
  - (k) *Amended application for certificate of authority.*
- (2) *The Secretary of State may mandate the use of the forms listed in subsection (1) of this section.*

- (3) *The Secretary of State may prescribe and furnish on request forms for other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.*

SECTION 99. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, a document filed with the Secretary of State shall be effective at the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or, if later, at the time specified in the document as its effective time on the date it is filed.*
- (2) *A document may specify a delayed effective time and date. If it does so and is filed pursuant to subsection (1) of this section, then the document shall become effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.*
- (3) *Except as otherwise provided in this subchapter, a document filed in accordance with this section shall be effective regardless of a failure to file the document with the county clerk.*

SECTION 100. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A record that satisfies the requirements of this section, and of any other section of this subchapter that adds to or varies these requirements, shall be entitled to filing by the Secretary of State.*
- (2) *This subchapter shall require or permit filing the record in the Office of the Secretary of State.*
- (3) *The record shall contain the information required by this subchapter. It may also contain other information.*
- (4) *The record shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Manually signed photocopies or other reproduced copies of typewritten or printed records may be filed.*
- (5) *The record shall be in the English language. A limited partnership name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any record that may be filed by a foreign limited partnership that is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the limited liability company is formed may be in a language other than English if accompanied by a reasonably-authenticated English translation.*
- (6) *The person executing the record shall sign it and print beneath or opposite his or her signature the names of the person and the capacity in which he or she signs.*
- (7) *The person executing the record may do so as an attorney-in-fact. Powers of attorney relating to the execution of the record shall not be required to be provided to or filed with the Secretary of State.*
- (8) *If the Secretary of State has prescribed a mandatory form for a record, then the record shall be in or on the prescribed form.*
- (9) *The record shall be delivered to the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, then the Secretary of State may require that it be accompanied by two (2) exact or conformed copies.*
- (10) *One (1) exact or conformed copy, or, if transmitted electronically, a reproduction in paper form, shall be filed with and recorded by the county clerk of the county in which the registered office of the limited partnership is located. A county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited partnerships. A document otherwise filed in accordance with this section with the Secretary of State shall be effective regardless of failure to file the document with the county clerk in accordance with this subsection.*
- (11) *When the record is delivered to the Secretary of State for filing, the correct filing fee and any other moneys required by this subchapter or other law to be collected by the Secretary of State therewith shall be paid or provision for payment made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, debit card, charge card, or similar method.*

*However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.*

SECTION 101. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

(1) *The Secretary of State shall collect the following fees when the following records in this subsection are delivered for filing:*

- (a) *Certificate of limited partnership ..... \$ 40.00*
- (b) *Application for certificate of authority as  
a foreign limited partnership..... \$ 90.00*
- (c) *Amendment of certificate of limited partnership..... \$ 40.00*
- (d) *Restatement of certificate of limited partnership.....\$40.00*
- (e) *Amendment and restatement of  
certificate of limited partnership .....\$80.00*
- (f) *Certificate of dissolution with respect  
to a domestic limited partnership .....\$40.00*
- (g) *Statement of change of registered agent or  
change of the address of the registered office, or both.....\$10.00*
- (h) *Registered agent's statement of change of registered  
office for each affected limited partnership.....\$10.00*  
*Not to exceed a total of .....\$1,000.00*
- (i) *Statement of change of the mailing address  
of the principal office ..... \$10.00*
- (j) *Application to reserve a name for use by  
a domestic or foreign limited partnership .....\$15.00*
- (k) *Notice of the transfer of a name reserved  
for use by a domestic or a foreign limited partnership .....\$15.00*
- (l) *Application for registered name .....\$36.00*
- (m) *Application for renewal of registered name.....\$36.00*
- (n) *Articles of merger .....\$50.00*
- (o) *Application for amended certificate of authority.....\$40.00*
- (p) *Application for certificate of withdrawal.....\$40.00*
- (q) *Statement of correction.....\$20.00*
- (r) *Certificate of existence or authorization.....\$10.00*
- (s) *Reinstatement penalty following administrative dissolution.....\$100.00*
- (t) *Annual report .....\$15.00*
- (u) *Amendment to annual report .....\$10.00*
- (v) *Any other record required or permitted to be filed by this subchapter .....\$15.00*

(2) *The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on the Secretary of State under this subchapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if the party prevails in the proceeding.*

- (3) *The Secretary of State shall collect the following fees for copying and certifying the copy of any filed records relating to a domestic or foreign limited partnership:*

*Copies, per page     \$0.50*

*Certifications, each \$5.00*

- (4) *The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited partnerships.*

SECTION 102. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited partnership may register its name, or its name with any addition required by Section 165 of this Act, if the name is distinguishable upon the records of the Secretary of State as required under Section 87 of this Act.*
- (2) *A foreign limited partnership shall register its name, or its name with any addition required by Section 165 of this Act, by delivering to the Secretary of State for filing an application setting forth:*
- (a) *Its name, or its name with any addition required by Section 165 of this Act;*
  - (b) *The state or country and date of its organization;*
  - (c) *A brief description of the nature of the business in which it is engaged; and*
  - (d) *A statement that the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its formation.*
- (3) *The name shall be registered for the applicant's exclusive use upon the effective date of the application.*
- (4) *A foreign limited partnership whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application between October 1 and December 31 of the preceding year. The renewal application shall comply with the requirements of subsection (2) of this section and when filed shall renew the registration for the following calendar year.*
- (5) *A foreign limited partnership whose registration is effective may thereafter qualify as a foreign limited partnership under the registered name or consent in writing to the use of that name by a limited partnership thereafter organized under this subchapter or by another foreign limited partnership thereafter authorized to transact business in this Commonwealth. The registration shall terminate when the domestic limited partnership is organized or the foreign limited partnership qualifies or consents to the qualification of another foreign limited partnership under the registered name.*

SECTION 103. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a record delivered to the Secretary of State for filing satisfies the requirements of this subchapter, then the Secretary of State shall file it.*
- (2) *The Secretary of State shall file a record by recording it as filed on the date and time of receipt. After filing a record, the Secretary of State shall deliver to the domestic or foreign limited partnership or its representative a copy of the record with an acknowledgment of the date and time of filing.*
- (3) *If the Secretary of State refuses to file a record, then the Secretary of State shall return it to the domestic or foreign limited partnership or its representative within five (5) days after the record was delivered, together with a brief written explanation of the reason for the refusal.*
- (4) *The Secretary of State's duty to file records under this section shall be ministerial. The filing or refusal to file a record by the Secretary of State shall not:*
- (a) *Affect the validity or invalidity of the record in whole or part;*
  - (b) *Relate to the correctness or incorrectness of information contained in the record; or*
  - (c) *Create a presumption that the record is valid or invalid or that information contained in the record is correct or incorrect.*

- (5) *If the Secretary of State refuses to file a document delivered for filing, then the domestic or foreign limited partnership may appeal the refusal to the Franklin Circuit Court. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file. The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate. The court's final decision may be appealed as in other civil proceedings.*

SECTION 104. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A certificate from the Secretary of State delivered with a copy of the record filed with the Secretary of State is conclusive evidence that the original record is on file with the Secretary of State.*

SECTION 105. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to form a limited partnership, a certificate of limited partnership shall be delivered to the Secretary of State for filing. The certificate shall state:*
- (a) *The name of the limited partnership, which shall comply with Section 87 of this Act;*
  - (b) *The street address of the initial designated office;*
  - (c) *The street address of the limited partnership's initial registered office, and the name of its initial registered agent at that office;*
  - (d) *The name and street address of each general partner; and*
  - (e) *Any additional information required by this subchapter.*
- (2) *If the limited partnership elects to be a limited liability limited partnership, then the certificate shall contain a statement that the limited partnership elects to be a limited liability limited partnership.*
- (3) *A certificate of limited partnership may also contain any other matters but shall not vary from the provisions specified in subsection (2) of Section 89 of this Act in a manner inconsistent with that section.*
- (4) *Subject to subsection (2) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, cancellation, or change, or filed articles of conversion or merger then:*
- (a) *The partnership agreement prevails as to partners and transferees; and*
  - (b) *The filed certificate of limited partnership, statement of dissociation, cancellation, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.*
- (5) *A written statement of the initial registered agent consenting to serve in that capacity shall accompany the certificate of limited partnership.*

SECTION 106. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to amend its certificate of limited partnership, a limited partnership shall deliver to the Secretary of State for filing an amendment or, pursuant to Sections 176 to 188 of this Act, articles of merger, stating:*
- (a) *The name of the limited partnership;*
  - (b) *The date of filing of its initial certificate; and*
  - (c) *The changes the amendment makes to the certificate as most recently amended or restated.*
- (2) *A limited partnership shall promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect:*
- (a) *The admission of a new general partner;*
  - (b) *The dissociation of a person as a general partner; or*

- (c) *The appointment of a person to wind up the limited partnership's activities under subsection (3) or (4) of Section 151 of this Act.*
- (3) *A general partner who knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:*
  - (a) *Cause the certificate to be amended; or*
  - (b) *If appropriate, deliver to the Secretary of State for filing a statement of change pursuant to Section 94 of this Act or a statement of correction pursuant to Section 111 of this Act.*
- (4) *A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.*
- (5) *A restated certificate of limited partnership may be delivered to the Secretary of State for filing in the same manner as an amendment.*
- (6) *Subject to subsection (3) of Section 99 of this Act, an amendment or restated certificate is effective when filed by the Secretary of State.*

SECTION 107. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A dissolved limited partnership that has completed winding up shall deliver to the Secretary of State for filing a statement of cancellation that states:*

- (1) *The name of the limited partnership;*
- (2) *The date of filing of its initial certificate of limited partnership; and*
- (3) *Any other information as determined by the general partners filing the statement or by a person appointed pursuant to subsection (3) or (4) of Section 151 of this Act.*

SECTION 108. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each record delivered to the Secretary of State for filing pursuant to this subchapter shall be signed in the following manner:*
  - (a) *An initial certificate of limited partnership shall be signed by all general partners listed in the certificate.*
  - (b) *An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership shall be signed by all general partners listed in the certificate.*
  - (c) *An amendment designating as general partner a person admitted under subsection (3)(b) of Section 151 of this Act following the dissociation of a limited partnership's last general partner shall be signed by that person.*
  - (d) *An amendment required by subsection (3) of Section 151 of this Act following the appointment of a person to wind up the dissolved limited partnership's activities shall be signed by that person.*
  - (e) *Any other amendment shall be signed by:*
    - 1. *At least one general partner listed in the certificate;*
    - 2. *Each other person designated in the amendment as a new general partner; and*
    - 3. *Each person that the amendment indicates has dissociated as a general partner, unless:*
      - a. *The person is deceased, or a guardian or general conservator has been appointed for the person and the amendment so states; or*
      - b. *The person has previously delivered to the Secretary of State for filing a statement of dissociation.*
  - (f) *A restated certificate of limited partnership shall be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate shall be signed in a manner that satisfies that paragraph.*

- (g) *A statement of cancellation shall be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, then by the person appointed pursuant to subsections (3) or (4) of Section 151 of this Act to wind up the dissolved limited partnership's activities.*
  - (h) *Articles of conversion shall be signed by each general partner listed in the certificate of limited partnership.*
  - (i) *Articles of merger shall be signed as provided in subsection (1) of Section 183 of this Act.*
  - (j) *Any other record delivered on behalf of a limited partnership to the Secretary of State for filing shall be signed by at least one (1) general partner listed in the certificate.*
  - (k) *A statement by a person pursuant to subsection (4) of Section 142 of this Act stating that the person has dissociated as a general partner shall be signed by that person.*
  - (l) *A statement of withdrawal by a person pursuant to Section 120 of this Act shall be signed by that person.*
  - (m) *A record delivered on behalf of a foreign limited partnership to the Secretary of State for filing shall be signed by at least one (1) general partner of the foreign limited partnership.*
  - (n) *Any other record delivered on behalf of any person to the Secretary of State for filing shall be signed by that person.*
- (2) *Any person may sign by an attorney in fact any record to be filed pursuant to this subchapter.*

SECTION 109. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a person required by this subchapter to sign a record or deliver a record to the Secretary of State for filing fails or refuses to do so, then any other person that is aggrieved by the failure or refusal may petition the Circuit Court in which the limited partnership maintains its registered office to order:*
  - (a) *The person to sign the record or deliver the record to the Secretary of State for filing; or*
  - (b) *The Secretary of State to file the record unsigned.*
- (2) *If the person aggrieved under subsection (1) of this section is not the limited partnership or foreign limited partnership to which the record pertains, then the aggrieved person shall make that limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) of this section may seek in the alternative all remedies provided in subsection (1)(a) of this section in the same action.*
- (3) *A record filed unsigned pursuant to this section is effective without being signed.*

SECTION 110. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless the Secretary of State determines that a record fails to comply with the filing requirements of this subchapter, and if all filing fees have been paid, then the Secretary of State shall file the record and:*
  - (a) *For a statement of dissociation, send:*
    - 1. *A copy of the filed statement to the person which the statement indicates has dissociated as a general partner; and*
    - 2. *A copy of the filed statement to the limited partnership;*
  - (b) *For a statement of withdrawal, send:*
    - 1. *A copy of the filed statement to the person on whose behalf the record was filed; and*
    - 2. *If the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and*
  - (c) *For all other records, send a copy of the filed record to the person, or the duly authorized representative thereof, on whose behalf the record was filed.*

- (2) *Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.*
- (3) *Except as otherwise provided in Sections 95 and 111 of this Act, a record delivered to the Secretary of State for filing under this subchapter may specify an effective time and a delayed effective date.*

SECTION 111. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A domestic or foreign limited partnership may correct, in accordance with subsection (2) of this section, a record filed by the Secretary of State if:*
  - (a) *The record contains an inaccuracy;*
  - (b) *The record was defectively executed, attested, sealed, verified, or acknowledged; or*
  - (c) *The electronic transmission of the record was defective.*
- (2) *A record shall be corrected:*
  - (a) *By preparing articles of correction that:*
    - 1. *Describe the record, including its filing date, or have attached a copy of the record to the statement of correction;*
    - 2. *Specify the inaccuracy or defect to be corrected; and*
    - 3. *Correct the inaccuracy or defect; and*
  - (b) *By delivering the statement of correction to the Secretary of State for filing.*
- (3) *Statements of correction shall be effective on the effective date of the record they correct except as to persons relying on the uncorrected record who are adversely affected by the correction. As to those persons, statement of correction shall be effective when filed.*

SECTION 112. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a record delivered to the Secretary of State for filing under this subchapter and filed by the Secretary of State contains false information, then a person that suffers loss by reliance on the information may recover damages for the loss from:*
  - (a) *A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and*
  - (b) *A general partner that has notice that the information was false when the record was filed or has become false due to changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 106 of this Act, file a petition pursuant to Section 109 of this Act, or deliver to the Secretary of State for filing a statement of change pursuant to Section 94 of this Act or a statement of correction pursuant to Section 111 of this Act.*
- (2) *It shall be unlawful for any person to sign a record the person knows is false in any material respect with intent that the record be delivered to the Secretary of State for filing. Any person who violates the provisions of this section shall be guilty of a Class B misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).*

SECTION 113. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person may request the Secretary of State to furnish a certificate of existence for a limited partnership or a certificate of authorization for a foreign limited partnership.*
- (2) *Upon payment of a fee, the Secretary of State shall furnish a certificate of existence requested under subsection (1) of this section if the filed records in the office of the Secretary of State show that the Secretary of State has filed a certificate of limited partnership and has not filed a statement of cancellation. A certificate of existence shall state:*

- (a) *The limited partnership's name;*
  - (b) *That it was duly formed under the laws of this Commonwealth and the date of formation;*
  - (c) *Whether all fees, taxes, and penalties due to the Secretary of State under this subchapter or other law have been paid;*
  - (d) *Whether the limited partnership's most recent annual report required by Section 114 of this Act has been filed by the Secretary of State;*
  - (e) *Whether the Secretary of State has administratively dissolved the limited partnership or filed a statement of cancellation; and*
  - (f) *Other facts of record in the office of the Secretary of State which may be requested by the applicant.*
- (3) *Upon payment of a fee, the Secretary of State shall furnish a certificate of authorization requested under subsection (1) of this section if the filed records in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization for a foreign limited partnership shall state:*
- (a) *The foreign limited partnership's name and any fictitious name adopted under subsection (1) of Section 165 of this Act for use in this Commonwealth;*
  - (b) *That it is authorized to transact business in this Commonwealth;*
  - (c) *Whether all fees, taxes, and penalties due to the Secretary of State under this subchapter or other law have been paid;*
  - (d) *Whether the foreign limited partnership's most recent annual report required by Section 114 of this Act has been filed by the Secretary of State;*
  - (e) *That the Secretary of State has not revoked its certificate of authority and has not filed a notice of cancellation; and*
  - (f) *Other facts of record in the office of the Secretary of State which may be requested by the applicant.*
- (4) *Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this Commonwealth.*

SECTION 114. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership subject to this subchapter or a foreign limited partnership authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report that states:*
- (a) *The name of the limited partnership or foreign limited partnership and the state or country under whose law it is organized;*
  - (b) *The street address of its designated office or, if a foreign limited partnership, the street address of its principal office; and*
  - (c) *The street address of the limited partnership's registered office and the name of its registered agent at that office.*
- (2) *Information in an annual report shall be current as of the date the annual report is delivered to the Secretary of State for filing.*
- (3) *The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the ensuing calendar years.*
- (4) *If a filed annual report contains an address of a designated office or the name of a registered agent or registered office address which differs from the information shown upon the records of the Secretary of*

*State immediately before the filing, then the differing information in the annual report is not considered a statement of change under Section 94 of this Act.*

SECTION 115. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A person becomes a limited partner:*

- (1) *As provided in the partnership agreement;*
- (2) *As the result of a merger or conversion under Sections 176 to 188 of this Act; or*
- (3) *With the consent of all the partners.*

SECTION 116. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.*

SECTION 117. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of any limited partner. A limited partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.*

SECTION 118. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *On ten (10) days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy during regular business hours in the limited partnership's designated office the information required by Section 90 of this Act. A limited partner making demand pursuant to this subsection need not demonstrate, state, or have any particular purpose for seeking the information.*
- (2) *A limited partner, during regular business hours and at a reasonable location specified by the limited partnership, may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:*
  - (a) *The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;*
  - (b) *The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and*
  - (c) *The information sought is directly connected to the limited partner's purpose.*
- (3) *Within ten (10) days after receiving a demand pursuant to subsection (2) of this section, the limited partnership shall in a record inform the limited partner that made the demand:*
  - (a) *What information the limited partnership will provide in response to the demand;*
  - (b) *When and where the limited partnership will provide that information; and*
  - (c) *If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.*
- (4) *Subject to subsection (6) of this section, a person dissociated as a limited partner may inspect and copy during regular business hours in the limited partnership's designated office the information required by Section 90 of this Act if:*
  - (a) *The information pertains to the period during which the person was a limited partner;*
  - (b) *The person seeks the information in good faith; and*
  - (c) *The person meets the requirements of subsection (2) of this section.*

- (5) *The limited partnership shall respond to a demand made pursuant to subsection (4) of this section in the same manner as provided in subsection (3) of this section.*
- (6) *If a limited partner dies, then Section 148 of this Act applies.*
- (7) *The limited partnership may impose reasonable limitations on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.*
- (8) *A limited partnership may charge a limited partner or person dissociated as a limited partner who makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.*
- (9) *Whenever this subchapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that the limited partnership knows and is material to the limited partner's decision.*
- (10) *A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. In that event, any limitations on availability and use under subsection (7) of this section apply both to the limited partner or person and to the attorney or other agent.*
- (11) *The rights stated in this section do not extend to a transferee, but:*
  - (a) *Subsection (4) of this section creates rights for a person dissociated as a limited partner;*
  - (b) *Subsection (6) of this section recognizes the rights of the executor or administrator of a deceased limited partner; and*
  - (c) *The rights under this section extend to the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.*

SECTION 119. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.*
- (2) *A limited partner shall discharge the duties to the partnership and the other partners under this subchapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.*
- (3) *A limited partner does not violate a duty or obligation under this subchapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.*

SECTION 120. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:*
  - (a) *Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Secretary of State for filing; or*
  - (b) *Withdraws from future participation as an owner in the enterprise by signing and delivering to the Secretary of State for filing a statement of withdrawal under this section.*
- (2) *A person that makes an investment described in subsection (1) of this section is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the Secretary of State files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.*

- (3) *If a person makes a diligent effort in good faith to comply with subsection (1)(a) of this section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Secretary of State for filing, then the person has the right to withdraw from the enterprise pursuant to subsection (1)(a) of this section even if otherwise the withdrawal would breach an agreement with others that are or have agreed to become co-owners of the enterprise.*

SECTION 121. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A person becomes a general partner:*

- (1) *As provided in the partnership agreement;*
- (2) *Under subsection (3)(b) of Section 149 of this Act following the dissociation of a limited partnership's last general partner;*
- (3) *As the result of a conversion or merger under Sections 176 to 188 of this Act; or*
- (4) *With the consent of all the partners.*

SECTION 122. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership, binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under subsection (4) of Section 82 of this Act that the general partner lacked authority.*
- (2) *An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was authorized by all the other partners.*

SECTION 123. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.*
- (2) *If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, then limited partnership is liable for the loss.*

SECTION 124. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.*
- (2) *A person admitted as a general partner into an existing limited partnership is not personally liable for any limited partnership obligation incurred before the person's admission as a general partner.*
- (3) *An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under subsection (2)(b) of Section 126 of this Act.*

SECTION 125. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *To the extent not inconsistent with Section 124 of this Act, any of the general partners may be joined in an action against the limited partnership or named in separate actions.*
- (2) *A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.*
- (3) *A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under Section 124 of this Act and:*
  - (a) *A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;*
  - (b) *The limited partnership is a debtor in bankruptcy;*
  - (c) *The general partner has agreed that the creditor need not exhaust limited partnership assets;*
  - (d) *A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or*
  - (e) *Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.*

SECTION 126. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this subchapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.*
- (2) *The consent of each partner is necessary to:*
  - (a) *Amend the partnership agreement;*
  - (b) *Amend the certificate of limited partnership to add or, subject to Section 185 of this Act, delete a statement that the limited partnership is a limited liability limited partnership; or*
  - (c) *Sell, lease, exchange, or otherwise dispose of all, or substantially all of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.*
- (3) *A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.*
- (4) *A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.*
- (5) *A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (3) or (4) of this section constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.*
- (6) *A general partner is not entitled to remuneration for services performed for the partnership.*

SECTION 127. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Without having to demonstrate, state, or have any particular purpose for seeking the information, a general partner may during regular business hours inspect and copy:*

- (a) *In the limited partnership's designated office, the required information; and*
  - (b) *At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.*
- (2) *Each general partner and the limited partnership shall furnish to a general partner:*
- (a) *Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this subchapter; and*
  - (b) *On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.*
- (3) *Subject to subsection (5) of this section, on ten (10) days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) of this section at the location specified in subsection (1) of this section if:*
- (a) *The information or record pertains to the period during which the person was a general partner;*
  - (b) *The person seeks the information or record in good faith; and*
  - (c) *The person satisfies the requirements of subsection (2) of Section 118 of this Act.*
- (4) *The limited partnership shall respond to a demand made pursuant to subsection (3) of this section in the same manner as provided in subsection (3) of Section 118 of this Act.*
- (5) *If a general partner dies, then Section 148 of this Act applies.*
- (6) *The limited partnership may impose reasonable limitations on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.*
- (7) *A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.*
- (8) *A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. In that event, any limitation on availability and use under subsection (6) of this section applies to the attorney or other agent and the general partner or person dissociated as a general partner.*
- (9) *The rights under this section do not extend to a transferee, but:*
- (a) *Subsection (3) of this section creates rights for a person dissociated as a general partner, and those rights extend to the legal representative of an individual who dissociated as a general partner under subsection (7)(b) or (7)(c) of Section 140 of this Act; and*
  - (b) *Subsection (5) of this section recognizes the rights of the executor or administrator of a deceased general partner.*

SECTION 128. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The fiduciary duties that a general partner has to the limited partnership and the other partners include the duties of loyalty and care under subsections (2) and (3) of this section.*
- (2) *A general partner's duty of loyalty to the limited partnership and the other partners includes, but it not limited to, the following:*
  - (a) *To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;*

- (b) *To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and*
  - (c) *To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.*
- (3) *A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities includes, but it not limited to, acting with the care that a reasonable person in a like position would exercise under similar circumstances and in a manner that the partner believes to be in the best interests of the limited partnership.*
  - (4) *A general partner shall discharge the duties to the limited partnership and the other partners under this subchapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.*
  - (5) *A general partner does not violate a duty or obligation under this subchapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.*

SECTION 129. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.*

SECTION 130. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partner's obligation to contribute money, property, or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.*
- (2) *If a partner does not make a promised contribution of property or services, then the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.*
- (3) *The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this subchapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (1) of this section, and without notice of any compromise under this subsection, may enforce the original obligation.*

SECTION 131. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A distribution by a limited partnership shall be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.*

SECTION 132. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.*

SECTION 133. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A person does not have a right to receive a distribution on account of dissociation.*

SECTION 134. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A partner, regardless of the nature of the partner's contribution, has no right to demand or receive any distribution from a limited partnership in any form other than cash. A limited partnership may distribute*

*an asset in kind only to the extent that each partner receives a percentage of the asset equal to the partner's share of distributions.*

- (2) *The property of a limited partnership subject to this subchapter shall not be subject to KRS 381.135(1)(a)1.*

SECTION 135. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*When a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.*

SECTION 136. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership shall not make a distribution in violation of the partnership agreement.*
- (2) *A limited partnership shall not make a distribution if after the distribution:*
- (a) *The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or*
  - (b) *The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.*
- (3) *A limited partnership may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.*
- (4) *Except as otherwise provided in subsection (7) of this section, the effect of a distribution under subsection (2) of this section is measured:*
- (a) *In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and*
  - (b) *In all other cases, as of the date:*
    1. *The distribution is authorized, if the payment occurs within one hundred twenty (120) days after that date; or*
    2. *The payment is made, if payment occurs more than one hundred twenty (120) days after that date.*
- (5) *A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.*
- (6) *A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.*
- (7) *If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.*
- (8) *For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.*

SECTION 137. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A general partner that consents to a distribution made in violation of Section 136 of this Act is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with Section 128 of this Act.*
- (2) *A partner or transferee that knew a distribution was made in violation of Section 136 of this Act is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under Section 136 of this Act.*
- (3) *A general partner against which an action is brought under subsection (1) of this section may:*
  - (a) *Implead in the action any other person that as a general partner consented to the distribution in violation of subsection (1) of this section and compel contribution from that person; and*
  - (b) *Implead in the action any person that received a distribution in violation of subsection (2) of this section and compel contribution from that person in the amount that person received in violation of subsection (2) of this section.*
- (4) *A proceeding under this section is barred if it is not commenced within two (2) years after the distribution.*

SECTION 138. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.*
- (2) *A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:*
  - (a) *The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;*
  - (b) *An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;*
  - (c) *The person's expulsion as a limited partner pursuant to the partnership agreement;*
  - (d) *The person's expulsion as a limited partner by the unanimous consent of the other partners if:*
    1. *It is unlawful to carry on the limited partnership's activities with that person as a limited partner;*
    2. *There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;*
    3. *The person is a corporation and, within ninety (90) days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or*
    4. *The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;*
  - (e) *On application by the limited partnership, the person's expulsion as a limited partner by judicial determination because:*
    1. *The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;*
    2. *The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under subsection (2) of Section 119 of this Act; or*

3. *The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;*
  - (f) *In the case of a person who is an individual, the person's death;*
  - (g) *In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;*
  - (h) *In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;*
  - (i) *Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;*
  - (j) *The limited partnership's participation in a merger or conversion under Sections 176 to 188 of this Act, if the limited partnership:*
    1. *Is not the converted or surviving entity; or*
    2. *Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.*

SECTION 139. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Upon a person's dissociation as a limited partner:*

- (1) *Subject to Section 148 of this Act, the person does not have further rights as a limited partner;*
- (2) *The person's obligation of good faith and fair dealing as a limited partner under subsection (2) of Section 119 of this Act continues only as to matters arising and events occurring before the dissociation;*
- (3) *Subject to Section 148 of this Act and Sections 176 to 188 of this Act, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee; and*
- (4) *The dissociation does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.*

SECTION 140. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:*

- (1) *The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;*
- (2) *An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;*
- (3) *The person's expulsion as a general partner pursuant to the partnership agreement;*
- (4) *The person's expulsion as a general partner by the unanimous consent of the other partners if:*
  - (a) *It is unlawful to carry on the limited partnership's activities with that person as a general partner;*
  - (b) *There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;*
  - (c) *The person is a corporation and, within ninety (90) days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed articles of dissolution or the equivalent, its articles of incorporation have been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the articles of dissolution or no reinstatement of its articles of incorporation or its right to conduct business; or*

- (d) *The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;*
- (5) *On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:*
  - (a) *The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;*
  - (b) *The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 128 of this Act; or*
  - (c) *The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;*
- (6) *The person's:*
  - (a) *Becoming a debtor in bankruptcy;*
  - (b) *Execution of an assignment for the benefit of creditors;*
  - (c) *Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that person or of all or substantially all of that person's property; or*
  - (d) *Failure, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;*
- (7) *In the case of a person who is an individual:*
  - (a) *The person's death;*
  - (b) *The appointment of a guardian or general conservator for the person; or*
  - (c) *A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;*
- (8) *In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;*
- (9) *In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;*
- (10) *Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;*
- (11) *The limited partnership's participation in a merger or conversion under Sections 176 to 188 of this Act, if the limited partnership:*
  - (a) *Is not the converted or surviving entity; or*
  - (b) *Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.*

SECTION 141. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to subsection (1) of Section 140 of this Act.*
- (2) *A person's dissociation as a general partner is wrongful only if:*
  - (a) *It is in breach of an express provision of the partnership agreement; or*
  - (b) *It occurs before the termination of the limited partnership and:*

1. *The person withdraws as a general partner by express will;*
  2. *The person is expelled as a general partner by judicial determination under subsection (5) of Section 140 of this Act;*
  3. *The person is dissociated as a general partner by becoming a debtor in bankruptcy; or*
  4. *In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.*
- (3) *A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 171 of this Act, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.*

SECTION 142. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Upon a person's dissociation as a general partner:*

- (1) *The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;*
- (2) *The person's duty of loyalty as a general partner under subsection (2)(c) of Section 128 of this Act terminates;*
- (3) *The person's duty of loyalty as a general partner under subsections (2)(a) and (2)(b) of Section 128 of this Act and duty of care under subsection (3) of Section 128 of this Act continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;*
- (4) *The person may sign and deliver to the Secretary of State for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated;*
- (5) *Subject to Section 148 of this Act and Sections 176 to 188 of this Act, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee; and*
- (6) *The dissociation does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.*

SECTION 143. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under Sections 176 to 188 of this Act or merged out of existence under Sections 176 to 188 of this Act, the limited partnership is bound by an act of the person only if:*
  - (a) *The act would have bound the limited partnership under Section 122 of this Act before the dissociation; and*
  - (b) *At the time the other party enters into the transaction:*
    1. *Less than two (2) years has passed since the dissociation; and*
    2. *The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.*
- (2) *If a limited partnership is bound under subsection (1) of this section, then the person dissociated as a general partner is liable:*
  - (a) *To the limited partnership for any damage caused to the limited partnership arising from that obligation; and*
  - (b) *If a general partner or another person dissociated as a general partner is liable for that obligation, to that general partner or other person for any damage caused to that general partner or other person arising from that liability.*

SECTION 144. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for a limited partnership's obligation incurred before dissociation. Except as otherwise provided in subsections (2) and (3) of this section, the person is not liable for a limited partnership's obligation incurred after dissociation.*
- (2) *A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under Section 124 of this Act on an obligation incurred by the limited partnership under Section 152 of this Act.*
- (3) *A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation, only if:*
  - (a) *A general partner would be liable on the transaction; and*
  - (b) *At the time the other party enters into the transaction:*
    1. *Less than two (2) years have passed since the dissociation; and*
    2. *The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.*
- (4) *By agreement with the limited partnership's creditor and the limited partnership, a person dissociated as a general partner may be released from liability for a limited partnership's obligation.*
- (5) *A person dissociated as a general partner is released from liability for a limited partnership's obligation if a limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the limited partnership's obligation.*

SECTION 145. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The only transferable interest of a partner is the partner's right to receive distributions. The interest is personal property.*

SECTION 146. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A transfer, in whole or in part, of a partner's transferable interest in the limited partnership:*
  - (a) *Is permissible;*
  - (b) *Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and*
  - (c) *Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as provided in subsection (3) of this section, or to inspect or copy the required information or the limited partnership's other records.*
- (2) *A transferee has a right to receive, in accordance with the transfer:*
  - (a) *Distributions to which the transferor would otherwise be entitled; and*
  - (b) *Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.*
- (3) *In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.*
- (4) *Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.*

- (5) *A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.*
- (6) *A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.*
- (7) *A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 130 and 137 of this Act. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.*
- (8) *Limitations upon transfer set forth in Sections 145 to 148 of this Act or adopted by the partners in accordance with this subchapter are enforceable notwithstanding KRS 355.9-406 and 355.9-408.*

SECTION 147. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.*
- (2) *A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.*
- (3) *At any time before foreclosure, an interest charged may be redeemed:*
  - (a) *By the judgment debtor;*
  - (b) *With property other than limited partnership property, by one or more of the other partners; or*
  - (c) *With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.*
- (4) *This subchapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.*
- (5) *This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.*

SECTION 148. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If a partner dies, then the deceased partner's executor, administrator, or other legal representative may exercise the rights of a transferee as provided in Section 146 of this Act, and for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 118 of this Act.*

SECTION 149. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Except as otherwise provided in Section 150 of this Act, a limited partnership is dissolved, and its activities shall be wound up, only upon the occurrence of any of the following:*

- (1) *The happening of an event specified in the partnership agreement;*
- (2) *The consent of all general partners and of all limited partners;*
- (3) *After the dissociation of a person as a general partner:*
  - (a) *If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within ninety (90) days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or*

- (b) *If the limited partnership does not have a remaining general partner, the passage of ninety (90) days after the dissociation, unless before the end of that period:*
1. *Consent to continue the activities of the limited partnership and admit at least one (1) general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and*
  2. *At least one (1) person is admitted as a general partner in accordance with that consent;*
- (4) *The passage of ninety (90) days after the dissociation of the limited partnership's last limited partner, unless before the end of that period the limited partnership admits at least one (1) limited partner; or*
- (5) *The administrative dissolution of the limited partnership by the Secretary of State under Section 157 of this Act.*

SECTION 150. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*On application by a partner, the Circuit Court of the county in which the limited partnership maintains its registered agent may decree dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.*

SECTION 151. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership continues after dissolution only for the purpose of winding up its activities.*
- (2) *In winding up its business the limited partnership:*
- (a) *May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in Section 107 of this Act, and perform other necessary acts; and*
  - (b) *Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.*
- (3) *If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:*
- (a) *Has the powers of a general partner under Section 152 of this Act; and*
  - (b) *Shall promptly amend the certificate of limited partnership to:*
    1. *State that the limited partnership does not have a general partner and that the person has been appointed to wind up the limited partnership; and*
    2. *State the street and mailing address of the person.*
- (4) *On the application of any partner, the Circuit Court of the county in which the limited partnership maintains its registered agent may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:*
- (a) *A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) of this section; or*
  - (b) *The applicant establishes other good cause.*

SECTION 152. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership is bound by a general partner's act after dissolution which:*
- (a) *Is appropriate for winding up the limited partnership's activities; or*

- (b) *Would have bound the limited partnership under Section 122 of this Act before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.*
- (2) *A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:*
  - (a) *At the time the other party enters into the transaction:*
    - 1. *Less than two (2) years has passed since the dissociation; and*
    - 2. *The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and*
  - (b) *The act:*
    - 1. *Is appropriate for winding up the limited partnership's activities; or*
    - 2. *Would have bound the limited partnership under Section 122 of this Act before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.*

SECTION 153. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under subsection (1) of Section 152 of this Act by an act that is not appropriate for winding up the partnership's activities, then the general partner is liable:*
  - (a) *To the limited partnership for any damage caused to the limited partnership arising from the obligation; and*
  - (b) *If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from that liability.*
- (2) *If a person dissociated as a general partner causes a limited partnership to incur an obligation under subsection (2) of Section 152 of this Act, then the person is liable:*
  - (a) *To the limited partnership for any damage caused to the limited partnership arising from the obligation; and*
  - (b) *If a general partner or another person dissociated as a general partner is liable for that obligation, then to that general partner or other person for any damage caused to that general partner or other person arising from that liability.*

SECTION 154. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2) of this section.*
- (2) *A dissolved limited partnership may in a record notify its known claimants of the dissolution. The notice shall:*
  - (a) *Specify the information required to be included in a claim;*
  - (b) *Provide a mailing address to which the claim is to be sent;*
  - (c) *State the deadline for receipt of the claim, which shall not be less than one-hundred twenty (120) days after the date the notice in a record is received by the claimant;*
  - (d) *State that the claim will be barred if not received by the deadline; and*
  - (e) *Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any present or dissociated general partner which is based on Section 124 of this Act.*

- (3) *A claim against a dissolved limited partnership is barred if the requirements of subsection (2) of this section are met and:*
- (a) *The claim is not received by the specified deadline; or*
  - (b) *In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence a proceeding to enforce the claim against the limited partnership within ninety (90) days after the receipt of the notice of the rejection.*
- (4) *This section does not apply to a contingent liability or a claim based on an event occurring after the effective date of dissolution.*

SECTION 155. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.*
- (2) *The notice shall:*
- (a) *Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this Commonwealth, then in the county in which the limited partnership's registered office is or was last located;*
  - (b) *Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;*
  - (c) *State that a claim against the limited partnership is barred unless a proceeding to enforce the claim is commenced within five (5) years after publication of the notice; and*
  - (d) *Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any present or dissociated general partner which is based on Section 124 of this Act.*
- (3) *If a dissolved limited partnership publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited partnership within five (5) years after the publication date of the notice:*
- (a) *A claimant that did not receive notice in a record under Section 154 of this Act;*
  - (b) *A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and*
  - (c) *A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.*
- (4) *A claim not barred under this section may be enforced:*
- (a) *Against the dissolved limited partnership, to the extent of its undistributed assets;*
  - (b) *If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or*
  - (c) *Against any person liable on the claim under Section 124 of this Act.*

SECTION 156. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If a claim against a dissolved limited partnership is barred under Section 154 or 155 of this Act, then any corresponding claim under Section 124 of this Act is also barred.*

SECTION 157. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may commence a proceeding to administratively dissolve a domestic limited partnership if:
 
  - (a) *The limited partnership does not file its annual report with the Secretary of State within sixty (60) days after it is due;*
  - (b) *The limited partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or*
  - (c) *The partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.**
- (2) *If the Secretary of State determines that one (1) or more grounds exist for the administrative dissolution of a limited partnership, then he shall send to the partnership at its registered office by first class mail a written notice of that determination.*
- (3) *If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the limited partnership by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited partnership by mailing such certificate by first class mail to the limited partnership at its registered office.*
- (4) *A limited partnership administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs as provided in Sections 151 to 160 of this Act.*
- (5) *The administrative dissolution of a limited partnership shall not terminate the authority of its registered agent.*

SECTION 158. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership administratively dissolved may apply to the Secretary of State for reinstatement at any time after the effective date of the dissolution by filing an application that:
 
  - (a) *Recites the name of the limited partnership and identifies the effective date of that administrative dissolution;*
  - (b) *States that the ground or grounds for dissolution either did not exist or have been eliminated;*
  - (c) *States that the name of the limited partnership satisfies the requirements of Section 87 of this Act; and*
  - (d) *Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.**
- (2) *If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information provided therein is correct, then he shall cancel the certificate of administrative dissolution, prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and send a copy of the certificate to the limited partnership by first class mail at its registered office.*
- (3) *When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited partnership shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.*
- (4) *Notwithstanding any other provision to the contrary, any limited partnership that was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under Section 151 of this Act and to notify claimants under Sections 154 and 155 of this Act shall be prohibited from reinstatement.*

SECTION 159. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, then he shall serve the limited partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the limited partnership at its registered office.*
- (2) *The limited partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The limited partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the limited partnership's application for reinstatement, and the Secretary of State's notice of denial.*
- (3) *The court may summarily order the Secretary of State to reinstate the limited partnership, or may take any other action the court considers appropriate.*
- (4) *The court's final decision may be appealed as in any other civil proceedings.*

SECTION 160. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, shall be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.*
- (2) *Any surplus remaining after the limited partnership complies with subsection (1) of this section may be distributed in cash or, subject to subsection (1) of Section 134 of this Act, in kind.*
- (3) *If the limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) of this section, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, then the following rules apply:*
  - (a) *Each person that was a general partner when the obligation was incurred and that has not been released from that obligation under Section 144 of this Act shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy that obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.*
  - (b) *If a person fails to contribute the full amount required under subsection (3)(a) of this section with respect to an unsatisfied obligation of the limited partnership, then the other persons required to contribute by subsection (3)(a) of this section on account of that obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.*
  - (c) *If a person fails to make the additional contribution required by subsection (3)(b) of this section, further additional contributions are determined and due in the same manner as provided in that subsection.*
- (4) *A person that makes an additional contribution under subsection (3)(b) or (3)(c) of this section may recover from any person whose failure to contribute under subsection (3)(a) or (3)(b) of this section necessitated the additional contribution. A person shall not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection shall not exceed the amount the person failed to contribute.*
- (5) *The estate of a deceased individual is liable for the person's obligations under this section.*
- (6) *An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (3) of this section.*

SECTION 161. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its partners as partners.*

- (2) *A foreign limited partnership shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this Commonwealth.*
- (3) *A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this Commonwealth.*

SECTION 162. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited partnership may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall state:*
  - (a) *The name of the foreign limited partnership and, if that name does not comply with Section 87 of this Act, a fictitious name adopted pursuant to subsection (1) of Section 165 of this Act;*
  - (b) *The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;*
  - (c) *The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, then the street and mailing address of that required office;*
  - (d) *The street address of the foreign limited partnership's initial registered office, and the name of its initial registered agent at that office;*
  - (e) *The name and street and mailing address of each of the foreign limited partnership's general partners; and*
  - (f) *Whether the foreign limited partnership is a foreign limited liability limited partnership.*
- (2) *A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.*
- (3) *A written statement of the initial registered agent consenting to serve in that capacity shall accompany the application for a certificate of authority.*

SECTION 163. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Activities of a foreign limited partnership which do not constitute transacting business in this Commonwealth within the meaning of Sections 161 to 168 of this Act include:*
  - (a) *Maintaining, defending, and settling an action or proceeding;*
  - (b) *Holding meetings of its partners or carrying on any other activity concerning its internal affairs;*
  - (c) *Maintaining accounts in financial institutions;*
  - (d) *Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;*
  - (e) *Selling through independent contractors;*
  - (f) *Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;*
  - (g) *Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;*
  - (h) *Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;*
  - (i) *Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions of a like manner; and*

(j) *Transacting business in interstate commerce.*

- (2) *For purposes of Sections 161 to 168 of this Act, the ownership in this Commonwealth of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this Commonwealth.*
- (3) *This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this Commonwealth.*

SECTION 164. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Unless the Secretary of State determines that an application for a certificate of authority fails to comply with the filing requirements of this subchapter, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this Commonwealth, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.*

SECTION 165. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited partnership whose name does not comply with Section 87 of this Act shall not obtain a certificate of authority until it adopts, for the purpose of transacting business in this Commonwealth, a fictitious name that complies with Section 87 of this Act. A foreign limited partnership that adopts a fictitious name under this subsection and then obtains a certificate of authority with that name need not comply with KRS 365.015 for that name. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this Commonwealth under that name unless the foreign limited partnership is authorized under KRS 365.015 to transact business in this Commonwealth under another name.*
- (2) *If a foreign limited partnership authorized to transact business in this Commonwealth changes its name to one that does not comply with Section 87 of this Act, then it shall not thereafter transact business in this Commonwealth until it complies with subsection (1) of this section and obtains an amended certificate of authority.*

SECTION 166. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The Secretary of State may commence a proceeding under Section 167 of this Act to revoke the certificate of authority of a foreign partnership authorized to transact business in this Commonwealth if:*

- (1) *The foreign partnership does not file its annual report to the Secretary of State within sixty (60) days after it is due;*
- (2) *The foreign partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;*
- (3) *The foreign partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance; or*
- (4) *The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of partnership records in the state or other jurisdiction under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.*

SECTION 167. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State determines that one (1) or more grounds exist for the revocation of a certificate of authority, then he shall serve the foreign limited partnership with written notice of his determination by mailing the notice by first class mail to the foreign limited partnership at its registered office.*
- (2) *If the foreign partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, then the Secretary of State may revoke the foreign*

*partnership's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited partnership by mailing the notice by first class mail to the limited partnership at its registered office.*

- (3) *The authority of a foreign limited partnership to transact business in this Commonwealth shall cease on the date shown on the certificate revoking its certificate of authority.*
- (4) *The Secretary of State's revocation of a foreign limited partnership's certificate of authority shall be considered to appoint the Secretary of State the foreign partnership's agent for service of process in any proceeding based on the cause of action which arose during the time the foreign partnership was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign partnership at its principal office shown in its most recent annual report or any subsequent communication received from the partnership stating the current mailing address of its registered office, or, if none are on file, in its certificate of authority.*
- (5) *Revocation of a foreign partnership's certificate of authority shall not terminate the authority of the registered agent of the partnership.*
- (6) *A foreign limited partnership may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after service of the certificate of revocation. The foreign limited partnership may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.*
- (7) *The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.*
- (8) *The court's final decision may be appealed as in other civil proceedings.*

SECTION 168. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If the statement in the application for registration of a foreign limited partnership was false when made, or any arrangements or other facts described in the application have changed, making the application false in any respect, then the foreign limited partnership shall file with the Secretary of State a certificate in the form prescribed by the Secretary of State, signed by a general partner, correcting the statement. The certificate shall be effective upon filing with the Secretary of State.*

SECTION 169. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation in the form prescribed by the Secretary of State and signed by a general partner. A cancellation shall not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this Commonwealth.*

SECTION 170. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The Attorney General may maintain an action to restrain a foreign limited partnership from transacting business in this Commonwealth in violation of this subchapter.*

SECTION 171. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section, a partner may maintain a direct action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this subchapter or arising independently of the partnership relationship.*
- (2) *A partner bringing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.*

- (3) *The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.*

SECTION 172. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A partner may bring a derivative action to enforce a right of a limited partnership if the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time.*

SECTION 173. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:*

- (1) *That was a partner when the conduct giving rise to action occurred; or*
- (2) *Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of that conduct.*

SECTION 174. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*In a derivative action, the complaint shall state with particularity the date and content of the plaintiff's demand and the general partners' response to the demand.*

SECTION 175. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section:*
  - (a) *Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;*
  - (b) *If the derivative plaintiff receives any of those proceeds, then the derivative plaintiff shall immediately remit them to the limited partnership.*
- (2) *If a derivative action is successful in whole or in part, then the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.*

SECTION 176. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 176 to 188 of this Act, unless the context otherwise requires:*

- (1) *"Constituent limited partnership" means a constituent organization that is a limited partnership;*
- (2) *"Constituent organization" means an organization that is party to a merger;*
- (3) *"Converted limited partnership" means the limited partnership into which a converting organization converts pursuant to Sections 177, 178, 179, and 180 of this Act;*
- (4) *"Converting limited partnership" means a converting organization that is a limited partnership;*
- (5) *"Converting organization" means an organization that converts into another organization pursuant to Section 177 of this Act;*
- (6) *"General partner" means a general partner of a limited partnership;*
- (7) *"Governing statute" of an organization means the statute that governs the organization's internal affairs;*
- (8) *"Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute. The term includes domestic and foreign entities regardless of whether organized for profit;*
- (9) *"Organizational documents" means:*

- (a) *For a domestic or foreign general partnership, its partnership agreement;*
  - (b) *For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement; and*
  - (c) *For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;*
- (10) *"Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership;*
- (11) *"Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:*
- (a) *By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or*
  - (b) *By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one (1) or more specified persons liable for all or specified debts, liabilities, and obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization; and*
- (12) *"Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.*

SECTION 177. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to Section 185 of this Act, a partnership may be converted to a limited partnership as provided in Section 62 of this Act.*
- (2) *Subject to Section 185 of this Act, a limited partnership may be converted to a partnership as provided in Section 63 of this Act.*
- (3) *Subject to Section 185 of this Act, a limited partnership may be converted to a limited liability company as provided in KRS 275.370.*
- (4) *A limited liability company may be converted to a limited partnership pursuant to this section and Sections 178, 179, and 180 of this Act and a plan of conversion, if:*
  - (a) *The limited liability companies' governing statute authorizes the conversion;*
  - (b) *The conversion is not prohibited by the law of the jurisdiction that enacted that governing statute; and*
  - (c) *The limited liability company complies with its governing statute in effecting the conversion.*
- (5) *A plan of conversion of a limited liability company into a limited partnership shall be in a record and shall include:*
  - (a) *The name of the limited liability company before conversion;*
  - (b) *The name of the converted limited partnership;*
  - (c) *The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted limited partnership, and other consideration; and*
  - (d) *The organizational documents of the converted limited partnership.*

SECTION 178. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to Section 185 of this Act, a plan of conversion shall be approved by all the partners of a converting limited partnership.*

- (2) *Subject to Section 185 of this Act and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 179 of this Act, a converting limited partnership may amend the plan or abandon the planned conversion:*
- (a) *As provided in the plan; and*
  - (b) *Except as prohibited by the plan, by the same consent as was required to approve the plan.*
- (3) *Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a conversion.*

SECTION 179. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After a plan of conversion is approved, a converting limited liability company shall deliver to the Secretary of State for filing a certificate of limited partnership, which shall include:*
- (a) *A statement that the limited liability company has been converted into a limited partnership;*
  - (b) *The name of that limited liability company and its jurisdiction;*
  - (c) *The effective date of the conversion;*
  - (d) *A statement that the conversion was approved as required by this subchapter;*
  - (e) *A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and*
  - (f) *If the converted limited liability company is a foreign limited liability company not authorized to transact business in this Commonwealth, the street and mailing address of an office which the Secretary of State may use for the purposes of subsection (3) of Section 180 of this Act.*
- (2) *A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.*

SECTION 180. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *An organization that has been converted pursuant to Sections 176 to 188 of this Act is for all purposes the same entity that existed before the conversion.*
- (2) *When a conversion takes effect:*
- (a) *All property and contract rights owned by, and all rights, privileges, and immunities of, the converting partnership or limited partnership shall remain vested in the converted partnership or limited partnership without assignment, reversion, or impairment;*
  - (b) *All obligations of the converting partnership or limited partnership shall continue as obligations of the converted partnership or limited partnership;*
  - (c) *An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred, and the name of the converted partnership or limited partnership may be substituted in any pending action or proceeding for the name of the converting partnership or limited partnership; and*
  - (d) *Any written partnership agreement of the converted partnership or limited partnership shall be binding upon each person who becomes a partner in the converted partnership or limited partnership.*
- (3) *A converted organization that is a foreign entity consents to the jurisdiction of the courts of this Commonwealth to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this Commonwealth on that obligation. A converted organization that is a foreign entity and not authorized to transact business in this Commonwealth appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in subsection (3) or (4) of Section 96 of this Act.*

- (4) *A person who becomes a general partner in a limited partnership that is not a limited liability limited partnership as a result of a conversion shall be personally liable as a general partner for only those obligations incurred by the limited partnership after the conversion takes effect.*

SECTION 181. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *One (1) or more domestic limited partnerships may merge pursuant to a written plan of merger described in subsection (2) of this section with one (1) or more domestic or foreign partnerships, limited partnerships, limited liability companies, or corporations if:*
- (a) *The merger is not prohibited by the partnership agreement of any domestic limited partnership that is a party to the merger, and each domestic limited partnership that is a party to the merger approves the plan of merger in accordance with this subchapter and complies with the applicable terms of its partnership agreement in effecting the merger;*
  - (b) *Each domestic partnership, as a party to the merger, complies with the applicable merger provisions of Subchapter 1 of this chapter;*
  - (c) *Each domestic limited liability company, as a party to the merger, complies with the applicable merger provisions of KRS Chapter 275;*
  - (d) *Each domestic corporation, as a party to the merger, complies with the applicable merger provisions of KRS Chapter 271B; and*
  - (e) *The merger is permitted by the laws of the jurisdiction under which each foreign partnership, limited partnership, foreign limited liability company, or foreign corporation party to the merger is formed, organized, or incorporated, and each foreign partnership, limited partnership, limited liability company, or corporation complies with those laws in effecting the merger.*
- (2) *The written plan of merger shall set forth:*
- (a) *The name of each constituent business entity that is a party to the merger and the name of the surviving business entity into which each constituent business entity proposes to merge;*
  - (b) *The terms and conditions of the proposed merger, including but not limited to, a statement which sets forth whether limited liability is retained by the surviving business entity;*
  - (c) *The manner and basis of converting the partnership interests in each limited partnership and the interests in each business entity that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, or of any other business entity, or, in whole or in part, into cash or other property;*
  - (d) *The amendments to the articles of organization of a limited liability company, or articles of incorporation of a corporation or certificate of limited partnership, as the case may be, of the surviving business entity as are desired to be effected by the merger, or that no changes are desired; and*
  - (e) *Other provisions relating to the proposed merger that are deemed necessary or desirable.*

SECTION 182. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *Each domestic limited partnership that is to be a party to a proposed merger shall approve the proposed merger, unless the partnership agreement of that limited partnership provides otherwise, by the unanimous vote of the partners of the partnership.*
- (2) *A plan of merger may provide for the manner, if any, in which the plan may be amended at any time before the filing of the articles of merger with the Secretary of State.*
- (3) *Unless the domestic limited partnership's partnership agreement or the plan of merger, once authorized, provides otherwise, the merger may be abandoned at any time before the filing of the articles of merger with the Secretary of State by the affirmative vote of all partners of the domestic limited partnership, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger, if any.*
- (4) *Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a merger.*

SECTION 183. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *After a plan of merger is approved by each domestic or foreign partnership, limited partnership, limited liability company, or corporation that is a party to the merger, the surviving domestic or foreign partnership, limited partnership, limited liability company, or corporation shall deliver to the Secretary of State for filing articles of merger duly executed by each party to the merger setting forth:*
- (a) *The name of jurisdiction of formation or organization of each constituent business entity which is to merge;*
  - (b) *The plan of merger;*
  - (c) *The name of the surviving business entity;*
  - (d) *A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with the laws applicable to such business entity; and*
  - (e) *If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:*
    1. *Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and*
    2. *Appoints the Secretary of State as its agent for service of process in any such proceedings. The surviving entity shall specify the address to which a copy of process shall be mailed to it by the Secretary of State.*
- (2) *The merger shall take effect on the later of the date of the filing of the articles of merger or the date set forth in the articles of merger, in which case it shall not be later than ninety (90) days after the date on which the articles of merger were filed.*
- (3) *Upon the merger taking effect, if the surviving entity in the merger is a foreign partnership, limited partnership, or limited liability company, the entity shall be deemed:*
- (a) *To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting shareholders of each domestic corporation party to the merger; and*
  - (b) *To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Subtitle 13 of KRS Chapter 271B.*
- (4) *The articles of merger filed by the surviving entity in accordance with this section shall also be deemed to have been filed for any domestic limited liability company party to the merger in accordance with the applicable provisions of KRS Chapter 275 and for any domestic corporation party to the merger in accordance with KRS Chapter 271B.*
- (5) *The filing of articles of merger shall act to cancel the certificate of limited partnership for a domestic limited partnership that is not the surviving entity of the merger and that partnership's certificate of limited partnership shall be canceled upon the effective date of the articles of merger.*

SECTION 184. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*When a merger takes effect:*

- (1) *The separate existence of every domestic limited partnership that is a party to the merger except the surviving domestic limited partnership, if any, shall cease;*
- (2) *The title to all real estate and other property owned by each domestic limited partnership that is a party to the merger shall be vested in the surviving entity without reversion or impairment;*
- (3) *The surviving entity shall be responsible for all liabilities of each domestic limited partnership that is a party to the merger;*

- (4) *A proceeding pending by or against any domestic limited partnership party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted in the proceeding for the domestic limited partnership whose existence ceased;*
- (5) *If a domestic limited partnership is the surviving entity of the merger, then the certificate of limited partnership and partnership agreement of that limited partnership shall be amended to the extent provided in the plan of merger; and*
- (6) *The partnership interests of every domestic limited partnership that is a party to the merger that are to be converted into partnership interests, membership interests, shares, or other securities or obligations of the surviving limited partnership, limited liability company, or corporation or into cash or other property, in whole or in part, shall be so converted and the former holders of such partnership interests shall be entitled only to the rights provided in the plan of merger.*

SECTION 185. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, then approval and amendment of a plan of conversion or merger are ineffective without the consent of that partner, unless:*
  - (a) *The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of less than all the partners; and*
  - (b) *That partner has consented to that provision of the partnership agreement.*
- (2) *An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:*
  - (a) *The limited partnership's partnership agreement provides for that amendment with the consent of less than all the general partners; and*
  - (b) *Each general partner that does not consent to the amendment has consented to that provision of the partnership agreement.*
- (3) *A partner does not give the consent required by subsection (1) or (2) of this section merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of less than all the partners.*

SECTION 186. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A conversion or merger under Sections 176 to 188 of this Act does not discharge any liability under Sections 124 and 144 of this Act of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:*
  - (a) *The provisions of this subchapter pertaining to the collection or discharge of that liability continue to apply to that liability;*
  - (b) *For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and*
  - (c) *If a person is required to pay any amount under this subsection, then:*
    - 1. *The person has a right of contribution from each other person that was liable as a general partner under Section 124 of this Act when the obligation was incurred and has not been released from that obligation under Section 144 of this Act; and*
    - 2. *The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.*
- (2) *In addition to any other liability provided by law:*
  - (a) *A person who immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is*

*personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:*

1. *Does not have notice of the conversion or merger; and*
  2. *Reasonably believes that:*
    - a. *The converted or surviving business is the converting or constituent limited partnership;*
    - b. *The converting or constituent limited partnership is not a limited liability limited partnership; and*
    - c. *The person is a general partner in the converting or constituent limited partnership; and*
- (b) *A person who was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:*
1. *Immediately before the conversion or merger became effective the converting or surviving limited partnership was a not a limited liability limited partnership; and*
  2. *At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:*
    - a. *Does not have notice of the dissociation;*
    - b. *Does not have notice of the conversion or merger; and*
    - c. *Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.*

SECTION 187. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *An act of a person who immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:*
  - (a) *Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 122 of this Act; and*
  - (b) *At the time the third party enters into the transaction, the third party:*
    1. *Does not have notice of the conversion or merger; and*
    2. *Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.*
- (2) *An act of a person who before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:*
  - (a) *Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 122 of this Act if the person had been a general partner; and*
  - (b) *At the time the third party enters into the transaction, less than two (2) years have passed since the person dissociated as a general partner and the third party:*
    1. *Does not have notice of the dissociation;*

2. *Does not have notice of the conversion or merger; and*
  3. *Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.*
- (3) *If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (1) or (2) of this section, then the person is liable:*
- (a) *To the converted or surviving organization for any damage caused to the organization arising from the obligation; and*
  - (b) *If another person is liable for the obligation, to that other person for any damage caused to that other person arising from that liability.*

SECTION 188. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*Sections 176 to 188 of this Act do not preclude an entity from being converted or merged under other law.*

SECTION 189. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*In applying and construing this uniform 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 190. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*If any provision of this subchapter or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.*

SECTION 191. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*The provisions of this subchapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.*

SECTION 192. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A limited partnership formed under any statute of this Commonwealth prior to July 15, 1988, until or unless it becomes a limited partnership under this subchapter, shall continue to be governed by the provisions of the statute under which it was formed.*
- (2) *A limited partnership formed under any statute of this Commonwealth prior to July 15, 1988, may elect to become subject to this subchapter upon the filing of an amended and restated certificate of limited partnership which complies with the provisions of Section 105 of this Act.*
- (3) *Upon the occurrence of any event which would require the filing of a certificate of amendment by a limited partnership under the Kentucky Revised Uniform Limited Partnership Act, KRS 362.401 to 362.525, as it exists on the effective date of this Act, or under the statute under which the limited partnership was formed, the limited partnership shall file an amended and restated certificate of limited partnership which complies with the provisions of Section 105 of this Act.*
- (4) *A limited partnership formed under any statute of this Commonwealth prior to July 15, 1988, shall not be required to change its name to include the word "Limited" or the abbreviation "Ltd." until such time as it becomes subject to this subchapter.*
- (5) *The enactment of this subchapter shall not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on July 15, 1988, nor does any repeal of any statutory provision by 1988 Ky. Acts ch. 284, sec. 65, impair any contract or affect any right accrued before July 15, 1988.*

SECTION 193. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 363 IS CREATED TO READ AS FOLLOWS:

- (1) *This subchapter governs only:*
- (a) *A limited partnership formed on or after the effective date of Sections 81 to 195 of this Act; and*
  - (b) *Except as otherwise provided in subsection (2)(c) and (d) of this section, a limited partnership formed before the effective date of Sections 81 to 195 of this Act which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this subchapter. The filing of an amended or an amended and restated certificate of limited partnership electing limited liability limited partnership status shall constitute an election to be governed by Sections 81 to 195 of this Act.*
- (2) *With respect to a limited partnership formed before the effective date of Sections 81 to 195 of this Act that elects to be governed by Sections 81 to 195 of this Act, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:*
- (a) *Subsection (3) of Section 83 of this Act does not apply and the limited partnership has whatever duration it had under the law applicable immediately before the effective date of Sections 81 to 195 of this Act;*
  - (b) *Sections 138 and 139 of this Act do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before the effective date of Sections 81 to 195 of this Act;*
  - (c) *Subsection (4) of Section 140 of this Act does not apply;*
  - (d) *Subsection (4) of Section 140 of this Act does not apply and a court has the same power to expel a general partner as the court had before the effective date of Sections 81 to 195 of this Act; and*
  - (e) *Subsection (3) of Section 149 of this Act does not apply and the connection between a general partner's dissociation and the dissolution of the limited partnership is the same as existed before the effective date of Sections 81 to 195 of this Act.*
- (3) *With respect to a limited partnership that elects, pursuant to subsection (1)(b) of this section, to be subject to this subchapter, after the election takes effect the provisions of this subchapter relating to the liability of the limited partnership's general partners to third parties apply:*
- (a) *Before January 1, 2009, to:*
    - 1. *A third party that had not done business with the limited partnership in the year before the election took effect; and*
    - 2. *A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and*
  - (b) *On or after January 1, 2009, to all third parties.*

SECTION 194. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*This subchapter does not affect an action or proceeding commenced or right accrued before this subchapter takes effect.*

SECTION 195. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

*This subchapter may be cited as the Kentucky Uniform Limited Partnership Act (2006).*

SECTION 196. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO READ AS FOLLOWS:

*A limited liability company may be converted to a limited partnership as provided in Section 177 of this Act.*

Section 197. 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;
- (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 of goods, services, or property by a business entity reduced by the following:
  - (a) Sales and excise taxes paid; and
  - (b) Returns and allowances;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004, that would otherwise terminate;
- (8) "Net profit" 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, 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) "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, as apportioned under KRS 67.753;
- (12) "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) "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) "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, as apportioned under KRS 67.753; and
- (15) "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 198. KRS 136.638 is amended to read as follows:

- (1) Notwithstanding any other provision of law to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 136.600 to 136.660 shall be personally and individually liable, both jointly and severally, for the taxes imposed under KRS 136.604 or 136.616. Neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person. The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due. No person shall be personally and individually liable under this subsection if that person did not have authority to collect, account for, or pay over the tax at the time that the tax imposed by KRS 136.604 or 136.616 become or became due.
- (2) Notwithstanding KRS 275.150, *subsection (3) of Section 33 of this Act or predecessor law, subsection (3) of Section 124 of this Act*~~[362.220(2)]~~, or any other provision of law to the contrary, the managers of a limited liability company, ~~and~~ the partners of a ~~registered~~ limited liability partnership, *and the partners of a limited liability limited partnership* or any other person holding any equivalent office of a limited liability company, ~~or a registered~~ limited liability partnership, *or limited liability limited partnership* subject to KRS 136.600 to 136.660 shall be personally and individually liable, both jointly and severally, for the taxes imposed under KRS 135.604 and 136.616. Neither the dissolution or withdrawal of the limited liability company, ~~or registered~~ limited liability partnership, *or limited liability limited partnership* from the state nor the cessation of holding any office shall discharge the foregoing liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company, ~~and~~ partner of a ~~registered~~ limited liability partnership, *and general partner of a limited liability limited partnership* at the time the taxes become or became due. No person shall be personally and individually liable under this subsection, if that person had no authority to collect, account for, or pay over the tax at the time that the taxes imposed by KRS 136.604 become or became due or account for or pay over the tax at the time that the taxes imposed by KRS 136.616 become or became due.
- (3) "Taxes," as used in this section, shall include interest accrued at the rate provided by KRS 131.183 and all applicable penalties and fees imposed under this chapter and under KRS 131.180, 131.410 to 131.445, and 131.990.

Section 199. KRS 138.183 is amended to read as follows:

- (1) Notwithstanding any other provision of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the taxes imposed under KRS 138.130 to 138.205.
- (2) Corporate dissolution, withdrawal of the corporation from the state, or the cessation of holding any corporate office shall not discharge the liability of any person. The personal and individual liability shall apply to every person holding a corporate office at the time the tax becomes or became due.

- (3) Notwithstanding any other provision of this chapter, KRS 275.150, **subsection (3) of Section 33 of this Act or predecessor law, or subsection (3) of Section 124 of this Act**~~{or KRS 362.220(2)}~~ to the contrary, the managers of a limited liability company,~~and~~ the partners of a~~registered~~ limited liability partnership, **and the general partners of a limited liability limited partnership** or any other person holding any equivalent office of a limited liability company,~~or a registered~~ limited liability partnership **or limited liability limited partnership** subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.130 to 138.205.
- (4) Dissolution, withdrawal of the limited liability company,~~or registered~~ limited liability partnership, **or limited liability limited partnership** from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to every manager of a limited liability company,~~and~~ partner of a~~registered~~ limited liability partnership **or general partner of a limited liability limited partnership** at the time the tax becomes or became due.
- (5) No person shall be personally and individually liable under this section who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.130 to 138.205 at the time the tax imposed becomes or became due.
- (6) "Taxes" as used in this section include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and 131.990.

Section 200. KRS 138.448 is amended to read as follows:

- (1) Notwithstanding any other provision of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 138.210 to 138.446 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.210 to 138.446. Corporate dissolution, withdrawal of the corporation from the state, or the cessation of holding any corporate office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every person holding a corporate office at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax imposed becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and 131.990.
- (a) The provisions of this section shall not apply if a corporation on an annual basis elects to be exempt from the provisions of KRS 138.224 by:
1. Filing with the department a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the department, or five thousand dollars (\$5,000), whichever is greater;
  2. Certifying by an electronic method acceptable by both the dealer and the department no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and
  3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.
- For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.
- (b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer as prescribed by paragraph (a) of this subsection, the department may immediately make demand of the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340, and the provisions of this section shall apply.

- (2) Notwithstanding any other provision of this chapter, KRS 275.150, **subsection (3) of Section 33 of this Act or predecessor law, or subsection (3) of Section 124 of this Act**~~{or KRS 362.220(2)}~~ to the contrary, the managers of a limited liability company,~~and~~ the partners of a~~registered~~ limited liability partnership, **and**

*the general partners of a limited liability limited partnership* or any other person holding any equivalent office of a limited liability company, ~~or a registered~~ limited liability partnership, *or limited liability limited partnership* subject to the provisions of KRS 138.210 to 138.446 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 138.210 to 138.446. Dissolution, withdrawal of the limited liability company, ~~or registered~~ limited liability partnership, *or limited liability limited partnership* from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company, ~~and~~ partner of a ~~registered~~ limited liability partnership *and general partner of a limited liability limited partnership* at the time the tax becomes or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by KRS 138.210 to 138.446 at the time the tax becomes or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and KRS 131.990.

- (a) The provisions of this section shall not apply if a limited liability company, ~~or a~~ ~~registered~~ limited liability partnership, *or limited liability limited partnership* on an annual basis elects to be exempt from the provisions of KRS 138.224 by:
1. Filing with the department a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the department, or five thousand dollars (\$5,000), whichever is greater;
  2. Certifying by an electronic method acceptable by both the dealer and the department no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month; and
  3. Agreeing to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.

For the purpose of this paragraph, a "financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

- (b) If a dealer fails to certify the amount of tax collected or does not perform the electronic fund transfer prescribed by paragraph (a) of this subsection, the department may immediately make demand of the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340, and the provisions of this section shall apply.

Section 201. KRS 139.185 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person. The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due. Taxes as used in this section shall include interest accrued at the rate provided by KRS 139.650 and all applicable penalties imposed under this chapter and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.
- (2) Notwithstanding any other provisions of this chapter, KRS 275.150, *subsection (3) of Section 33 of this Act or predecessor law, or subsection (3) of Section 124 of this Act* ~~or KRS 362.220(2)~~ to the contrary, the managers of a limited liability company, ~~and~~ the partners of a ~~registered~~ limited liability partnership, *and the general partners of a limited liability limited partnership* or any other person holding any equivalent office of a limited liability company, ~~or a registered~~ limited liability partnership, *or limited liability limited partnership* subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter. Dissolution, withdrawal of the limited liability

company, ~~or registered~~ limited liability partnership, **or limited liability limited partnership** from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company, ~~and~~ partner of a ~~registered~~ limited liability partnership, **and the general partners of a limited liability limited partnership** at the time the taxes become or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.

Section 202. KRS 141.010 is amended to read as follows:

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

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2004, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;
- (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) "Modified gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:
  - (a) Include interest income derived from obligations of sister states and political subdivisions thereof; and
  - (b) Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (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. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.  
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.
  - 2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
  - 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 portion of 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;
  - (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;
  - (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; and
  - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (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 or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
  - (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;
  - (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;
  - (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;
  - (m) Exclude the distributive share income or loss received from a corporation subject to the tax imposed by KRS 141.040 ; and
  - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (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);
  - (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; and

- (g) Any deduction prohibited by KRS 141.205;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
- (c) "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
- (d) "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 commissioner, "taxable year" means the period for which the 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:
  - (a) "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
  - (b) S corporations as defined in Section 1361(a) of the Internal Revenue Code;
  - (c) A foreign limited liability company as defined in KRS 275.015(6);
  - (d) A limited liability company as defined in KRS 275.015(8);
  - (e) A professional limited liability company as defined in *subsection (18) of Section 232 of this Act* ~~KRS 275.015(19)~~;

- (f) A foreign limited partnership as defined in KRS 362.401(4) *or in subsection (9) of Section 81 of this Act*;
- (g) A limited partnership as defined in KRS 362.401(7) *or in subsection (14) of Section 81 of this Act*;
- (h) ~~A registered~~ limited liability partnership as defined in KRS 362.155(7) *or in either subsection (7) or subsection (8) of Section 1 of this Act*;
- (i) A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
- (j) A regulated investment company as defined in Section 851 of the Internal Revenue Code;
- (k) A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
- (l) A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
- (m) Other similar entities created with limited liability for their partners, members, or shareholders.

"Corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

- (25) "Doing business in this state" includes but is not limited to:
  - (a) Being organized under the laws of this state;
  - (b) Having a commercial domicile in this state;
  - (c) Owning or leasing property in this state;
  - (d) Having one (1) or more individuals performing services in this state;
  - (e) Maintaining an interest in a general partnership doing business in this state;
  - (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state; or
  - (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

- (26) "Cost of goods sold" means the cost of goods sold calculated using the same method specified by the Internal Revenue Service for the purpose of computing federal income tax. In determining cost of goods sold:
  - (a) Labor costs shall be limited to direct labor costs as defined in subsection (28) of this section; and
  - (b) Bulk delivery costs as defined in subsection (29) of this section may be included;
- (27) "Kentucky gross profits" means Kentucky gross receipts reduced by returns and allowances attributable to Kentucky gross receipts, less the cost of goods sold attributable to Kentucky gross receipts;
- (28) "Direct labor" means labor that is incorporated into the product sold or is an integral part of the manufacturing process; and
- (29) "Bulk delivery costs" means the cost of delivering the product to the consumer if the product is delivered in bulk and requires specialized equipment that generally precludes commercial shipping and is taxable under KRS 138.220.

Section 203. KRS 141.340 is amended to read as follows:

- (1) An employer shall be liable for the payment of the tax required to be deducted and withheld under KRS 141.310 and 141.315, and shall not be liable to any person for the amount of any such payment.
- (2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any corporation subject to KRS 141.310 or 141.315 shall be personally and individually liable, both jointly

and severally, for any tax required to be withheld under this chapter from wages paid to one (1) or more employees of any such corporation, and neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any such corporate office shall discharge the foregoing liability of any such person; provided that the personal and individual liability shall apply to each or every person holding such corporate office at the time such tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.138, all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.

- (3) Notwithstanding any other provisions of this chapter, KRS 275.150, *subsection (3) of Section 33 of this Act or predecessor law, or subsection (3) of Section 124 of this Act* ~~or KRS 362.220(2)~~ to the contrary, the managers of a limited liability company, ~~and~~ the partners of a ~~registered~~ limited liability partnership, *or the general partners of a limited liability limited partnership* or any other person holding any equivalent office of a limited liability company, ~~or a registered~~ limited liability partnership, *or limited liability limited partnership* subject to KRS 141.310 or 141.315 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this chapter from wages paid to one (1) or more employees of any such limited liability company, ~~or registered~~ limited liability partnership, *or limited liability limited partnership*. Dissolution, withdrawal of the limited liability company, ~~or registered~~ limited liability partnership, *or limited liability limited partnership* from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company, ~~and~~ partner in a ~~registered~~ limited liability partnership, *and general partner of a limited liability limited partnership* at the time the taxes become or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.

Section 204. KRS 142.050 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
- (a) "Deed" means any document, instrument, or writing other than a will and other than a lease or easement, regardless of where made, executed, or delivered, by which any real property in Kentucky, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.
  - (b) "Value" means:
    1. In the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and
    2. In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- (2) A tax upon the grantor named in the deed shall be imposed at the rate of fifty cents (\$0.50) for each \$500 of value or fraction thereof, which value is declared in the deed upon the privilege of transferring title to real property.
- (3) (a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the county clerk shall ascertain and compute the amount of the tax due thereon and shall collect the amount as prerequisite to acceptance of the deed for recordation.
- (b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the deed.
- (c) The tax required to be levied by this section shall be collected only once on each transaction and in the county in which the deed is required to be recorded by KRS 382.110(1).

- (4) The county clerk shall collect the amount due and certify the date of payment and the amount of collection on the deed. The county clerk shall retain five percent (5%) as his fee for collection and remit the balance every three (3) months to the county treasurer, who shall deposit the money in the county general fund.
- (5) The Department of Revenue may prescribe regulations necessary to carry out the purposes of this section.
- (6) Any county clerk who willfully shall record any deed upon which a tax is imposed by this section without collecting the proper amount of tax and certifying the date and amount of collection on the deed as required by this section based on the declared value indicated in the affidavit appended to the deed shall, upon conviction, be fined \$50 for each offense.
- (7) The tax imposed by this section shall not apply to a transfer of title:
- (a) Recorded prior to March 27, 1968;
  - (b) To, in the event of a deed of gift or deed with nominal consideration, or from the United States of America, this state, any city or county within this state, or any instrumentality, agency, or subdivision hereof;
  - (c) Solely in order to provide or release security for a debt or obligation;
  - (d) Which confirms or corrects a deed previously recorded;
  - (e) Between husband and wife, or between former spouses as part of a divorce proceeding;
  - (f) On sale for delinquent taxes or assessments;
  - (g) On partition;
  - (h) Pursuant to:
    1. Merger or consolidation between and among corporations, partnerships,~~including registered limited liability partnerships,~~ limited partnerships, or limited liability companies; or
    2. **Any**~~The~~ conversion of a ~~general~~ partnership~~, including a registered limited liability partnership,~~ ~~or a~~ limited partnership **corporation, or limited liability company** into a **partnership, limited partnership, corporation, or** limited liability company;
  - (i) Between a subsidiary corporation and its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of either corporation's stock;
  - (j) Under a foreclosure proceeding;
  - (k) Between a person and a corporation,~~general~~ partnership, limited partnership ~~registered limited liability partnership,~~ or limited liability company in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the transferor of the property in the entity to which the property was transferred, if the transfer was for nominal consideration;
  - (l) Between parent and child or grandparent and grandchild, with only nominal consideration therefor;
  - (m) By a corporation,~~general~~ partnership, limited partnership,~~registered limited liability partnership,~~ or limited liability company to a person as owner or shareholder of the entity, upon dissolution of the entity, in an amount equal to the portion of the value of the real property transferred that represents the proportionate interest of the person to whom the property was transferred, if the transfer was for nominal consideration;
  - (n) Between a trustee and a successor trustee; and
  - (o) Between a limited liability company and any of its members.
- (8) The tax imposed by subsection (2) of this section shall not apply to transfers to a trustee, to be held in trust, or from a trustee to a beneficiary of the trust if:
- (a) The grantor is the sole beneficiary of the trust;
  - (b) The grantor is a beneficiary of the trust and a direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section; or

(c) A direct transfer from the grantor of the trust to all other individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to one (1) of the provisions of subsection (7) of this section.

(9) As used in this section, "trust" shall have the same definition as contained in KRS 386.800.

Section 205. KRS 142.404 is amended to read as follows:

Notwithstanding any other provision of law to the contrary, the president, vice president, secretary, treasurer, manager, partner, or any other person holding any equivalent office or position in any corporation, limited liability company, ~~or registered~~ limited liability partnership, **or limited liability limited partnership** subject to KRS 142.400 and 142.402 shall be personally and individually liable, both jointly and severally, for the tax imposed under KRS 142.400. Dissolution, withdrawal of the corporation, **limited liability company, limited liability partnership, or limited liability limited partnership** ~~company, or partnership~~ from the state, or the cessation of holding any office shall not discharge the liability of any person. The liability shall attach at the time the tax becomes or became due. No person shall be held liable under this section if the person did not have authority to collect, truthfully account for, or pay over the tax at the time it became due. "Taxes" as used in this section shall include interest accrued under KRS 131.183 and all applicable penalties imposed under this chapter or KRS 131.180, 131.410 to 131.445, and 131.990.

Section 206. 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 Commerce 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, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210;
- (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, **limited 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 Commerce 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:
  - (a) Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);
  - (b) Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;
  - (c) Is 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) 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) A tourism attraction may include lodging facilities if:
    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;

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) A tourism attraction shall not include the following:
1. 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
  2. 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.

Section 207. KRS 154.01-010 is amended to read as follows:

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

- (1) "Agribusiness" or "agricultural business entity" means any person, partnership, *limited partnership*, ~~registered limited liability partnership,~~ corporation, limited liability company, or any other entity engaged in a business that processes raw agricultural products, including timber, or provides value-added functions with regard to raw agricultural products;
- (2) "Approved business network" or "approved flexible industrial network" means a business network comprising three (3) or more business firms or industries which have been identified as key industries and targeted by the state's strategic economic development plan for special consideration and assistance by the agencies of the Commonwealth;
- (3) "Authority" means the Kentucky Economic Development Finance Authority, consisting of a committee as set forth in KRS 154.20-010;
- (4) "Board" means the Kentucky Economic Development Partnership, an administrative body within the meaning of KRS 12.010, and the governing body of the Cabinet for Economic Development, as created and established in KRS 154.10-010;
- (5) "Business network" or "flexible industrial network" means a formalized, collaborative mechanism organized by and operating among three (3) or more industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology

investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities;

- (6) "Cabinet" means the Cabinet for Economic Development as established under KRS 12.250, and governed by the Kentucky Economic Development Partnership;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Cost of a project" means the cost of the acquisition, construction, reconstruction, conversion, or leasing of any industrial, commercial, health care, agricultural, or forestry enterprise, or any part thereof, to carry out the purposes and objectives of this chapter, including, but not limited to, acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land, including leasehold improvements, machinery, equipment, or furnishings; working capital; and administrative costs including, but not limited to, engineering, architectural, legal, and accounting fees which are necessary for the project;
- (9) "Local and regional economic development interest" means any local business or economic development interest, including, but not limited to, chambers of commerce, business development associations, industrial development organizations, area development districts, and public economic development entities;
- (10) "Industrial entity" means any corporation, limited liability company, partnership, *limited partnership*, ~~registered limited liability partnership,~~ person, or any other legal entity, domestic or foreign, which will itself or through its subsidiaries or affiliates, engage in an industrial improvement project in the Commonwealth;
- (11) "Industrial improvement project" means and includes the acquisition, construction, or implementation of new manufacturing, processing, or assembling facilities, equipment, methods or processes, or improvements to or repair of existing manufacturing, processing, or assembling facilities, equipment, methods, or processes, as well as improvements to the real estate upon which the facilities are located, and includes any capital improvement to any existing facility, including any restructuring, retooling, rebuilding, reequipping, or any other form of upgrading such existing facility and equipment and any other improvements to such real estate, existing facility, or manufacturing, processing, or assembling equipment, method, or process;
- (12) "Key industry" means an industry or business within an industrial sector which has been identified in and targeted by the state's economic development strategic plan as having major importance to the sustained economic growth of the Commonwealth and in which member firms sell goods or services into markets for which national or international competition exists, including, but not limited to, secondary forest products manufacturing, agribusiness, and high technology and biotechnology manufacturing and services;
- (13) "Military" and "defense" mean all military and defense installations, entities, activities, and personnel located, operating, or living in Kentucky;
- (14) "Municipality" means a county, city, village, township, development organization, an institution of higher education, a community or junior college, a subdivision or instrumentality of any of the foregoing, or any entity created by two (2) or more municipalities pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300;
- (15) "Network broker" means a person who is trained to assist private sector firms to form business networks and make other similar efforts to provide for joint manufacturing, marketing, technology development, information dissemination, and other activities;
- (16) "Non-appropriation-supported bond" means any long-term financial borrowing instrument for which regular debt service does not originate from an appropriation of the General Assembly;
- (17) "Non-appropriation-supported note" means any short-term financial borrowing instrument for which loan payments do not originate from an appropriation of the General Assembly;
- (18) "Person" means an individual, partnership, ~~registered limited liability partnership,~~ joint venture, military facility operated by a department or agency of the United States, profit or nonprofit corporation including a public or private college or university, limited liability company, or other entity or association of persons organized for agricultural, commercial, health care, or industrial purposes; or a public utility or local industrial development corporation;
- (19) "Private sector" means any source other than the authority, a state or federal entity, or an agency thereof;

- (20) "Project" means an endeavor approved by the cabinet or authority and related to industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, or agricultural enterprise. Project shall include, but is not limited to, agribusiness, agricultural or forestry production, harvesting, storage, or processing facilities or equipment; equipment or facilities designed to produce energy from renewable resources; research parks; office facilities; engineering facilities; research and development laboratories; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right-of-way, and appurtenances; airports and airport renovation; water and air pollution control equipment or waste disposal facilities; tourist facilities; theme or recreational parks; health care and health related facilities; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; wharves and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities. Except for airport-related facilities, project shall not include that portion of an endeavor devoted to the sale of goods at retail or that portion of an endeavor devoted to housing which does not consist of the manufacture of housing;
- (21) "Reclamation development fund" means the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;
- (22) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under subsection (20) of this section;
- (23) "Reclamation development plan" means a plan submitted to the Environmental and Public Protection Cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;
- (24) "Secretary" means the chief executive officer and secretary of the Cabinet for Economic Development;
- (25) "State" means the Commonwealth of Kentucky; and
- (26) "Tax revenues" means any revenues received by the Commonwealth directly or indirectly as a result of the industrial improvement project, including state corporate income taxes, state income taxes paid by employees who work in the project, state property taxes, state corporation license taxes, or state sales and use taxes.

Section 208. KRS 154.10-030 is amended to read as follows:

The board shall have all the powers and authority, not explicitly prohibited by statute, necessary or convenient to carry out and effectuate the functions, duties, and responsibilities of the board and the cabinet, including, but not limited to, the following:

- (1) Serving as the governing body of the Cabinet for Economic Development;
- (2) Suing and being sued;
- (3) Adopting, using, and altering at will a corporate seal;
- (4) Approving economic development programs and projects;
- (5) Discharging the secretary of the Cabinet for Economic Development;
- (6) Approving the state's strategic economic development plan and subsequent implementation plans;
- (7) Providing for and directing the state's economic development strategic planning process;
- (8) Evaluating the performance and effectiveness of the Commonwealth's economic development systems, including:
  - (a) The establishment of benchmarks; and
  - (b) Program review;
- (9) Reporting to the Governor, the General Assembly, and the people of the Commonwealth regarding its functions, duties, and responsibilities, including, but not limited to:
  - (a) The Commonwealth's strategic economic development plan;

- (b) Program initiatives and implementation plans;
  - (c) Systems evaluations;
  - (d) Benchmarks;
  - (e) Program evaluation; and
  - (f) Activities of the cabinet;
- (10) Soliciting, borrowing, accepting, receiving, investing, and expending funds from any public or private source;
  - (11) Making grants, loans, and investments; guaranteeing and insuring loans, leases, bonds, notes, or other indebtedness, whether public or private; issuing letters of credit; and making loans to financial institutions to facilitate financing of all or part of an export-related transaction including, but not limited to, pre-export working capital financing and post-export receivable financing;
  - (12) Constructing, acquiring by gift, purchase, installment purchase, or lease, and reconstructing, improving, repairing, or equipping any project or any part of a project; and entering into a lease for the use or sale of a project;
  - (13) Making loans and participating in the making of loans; undertaking commitments to make loans and mortgages; buying and selling loans and mortgages at public or private sale; rewriting loans and mortgages; discharging loans and mortgages; foreclosing on mortgages and commencing any action to protect or enforce a right conferred upon the cabinet or placed within the control, authority, and responsibility of the cabinet under the provisions of this chapter; bidding for and purchasing property which was the subject of the mortgage at a foreclosure or other sale, and acquiring or taking possession of the property and, in that event, completing, administering, paying the principal and interest on obligations incurred in connection with the property; and disposing of and otherwise dealing with the property in a manner as may be necessary or desirable to protect the interests of the cabinet;
  - (14) Entering into a lease for the use or sale of a project; acquiring or contracting from any person, public entity, corporation, limited liability company, partnership, *limited partnership*, ~~registered limited liability partnership,~~ or entity, leaseholds, real or personal property, or any interest in real or personal property; owning, holding, clearing, improving, and rehabilitating and selling, assigning, exchanging, transferring, conveying, leasing, mortgaging, or otherwise disposing of or encumbering leaseholds, real or personal property, or any interest in real or personal property as is convenient for the accomplishment of the purposes of this chapter;
  - (15) Procuring insurance against any loss in connection with the cabinet's property, assets, or activities;
  - (16) Charging, imposing and collecting fees and charges in connection with any transaction, and providing for reasonable penalties for delinquent payment of fees or charges;
  - (17) Indemnifying and procuring insurance indemnifying members and officers of the board, and the cabinet and members and officers of the finance committee of the Kentucky Economic Development Finance Authority as provided in KRS 154.20-010, from personal loss or accountability from liability asserted by any person on the bonds or notes of the cabinet or authority, or any personal liability or accountability by reason of the issuance of bonds, notes, insurance, or guarantees; or by reason of acquisition, construction, ownership, or operation of any project funded in whole or part by the cabinet or authority; or by reason of any other action taken or the failure to act by the cabinet or authority;
  - (18) Mortgaging or creating security interests in a project or any part of a project, or in a lease or loan, or in the rents, revenues, or sums to be paid in favor of the holders of the bonds or notes issued by the cabinet;
  - (19) Conveying or releasing a project or any part of a project to a lessee, purchaser, or borrower under any agreement after provision has been made for the retirement in full of the bonds or notes issued for that project under the terms and conditions provided in the agreement, or as may be agreed with the holders of the bonds or notes, or as may otherwise be agreed with the holders of the bonds or notes;
  - (20) Issuing non-appropriation-supported bonds and notes including, but not limited to, commercial paper, refund bonds, and notes; paying the costs of issuance of bonds and notes; paying interest on bonds and notes;
  - (21) Making and entering into contracts and agreements necessary or incidental to the performance of its duties and execution of its powers;

- (22) Employing consultants and other persons and employees as may be required in the judgment of the board, essential to the cabinet's operations, functions, and responsibilities;
- (23) Providing technical assistance regarding any economic or job development project, program, or activity;
- (24) Delegating any powers, duties, responsibilities, and authority to any division, agency, or authority under its control and administration;
- (25) Reorganizing, pursuant to KRS 12.028, any organizational unit or administrative body under its control and jurisdiction;
- (26) Promulgating administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as prescribed in this chapter and governing the powers, duties, and responsibilities delegated to any administrative body transferred to the cabinet by law or otherwise placed within its control and responsibility; and
- (27) Doing all other things necessary or convenient to achieve its objectives and purposes which are not explicitly prohibited by statute.

Section 209. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- (1) "Applicant" means an educational institution, business, or industry that has made application for a grant-in-aid as authorized by KRS 154.12-205 to 154.12-208;
- (2) "Board" means the board of directors of the Bluegrass State Skills Corporation;
- (3) "Business and industry" means a private corporation, limited liability company, *limited partnership*, ~~registered limited liability partnership,~~ institution, firm, person, group, or other entity or association of the same, concerned with commerce, trade, manufacturing, or the provision of services within the Commonwealth, or a public or nonprofit hospital licensed by the Commonwealth, or any company whose primary purpose is the sale of goods at retail, if specific funds for grants-in-aid to retail business and industry are appropriated by the General Assembly;
- (4) "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- (5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent provider within the Commonwealth authorized by law to provide a program of skills training or education;
- (6) "Grant-in-aid" means funding that is provided to an educational institution and business and industry by the BSSC for the development or expansion of a program as provided in this chapter;
- (7) "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:
  - (a) Classroom instruction;
  - (b) Classroom-related field, shop, factory, office, or laboratory work; and
  - (c) Basic skills, entry level training, job upgrading, retraining, and advance training.
- (8) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

Section 210. KRS 154.12-2084 is amended to read as follows:

As used in KRS 154.12-2084 to 154.12-2089, unless the context requires otherwise:

- (1) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with KRS 154.12-2084 to 154.12-2089;
- (2) "Approved costs" means:

- (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (b) Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (e) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
  - (f) All other costs of a nature comparable to those described in this subsection;
- (3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent provider within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level or to adult persons without a high school diploma or its equivalent;
- (6) "Employee" means any person:
- (a) Who is currently a permanent full-time employee of the qualified company;
  - (b) Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company;
  - (c) Who is a Kentucky resident, as that term is defined in KRS 141.010; and
  - (d) Who receives a base hourly wage which is one hundred fifty percent (150%) of the federal minimum wage plus employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, if the qualified company is located in a county of Kentucky which has had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Department for Employment Services within the Cabinet for Workforce Development.

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020;

- (7) "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;
- (8) "Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminarily approval from the authority under KRS 154.12-2088 to receive a certain maximum amount of skills training investment credits;
- (9) "Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, ~~registered limited liability partnership,~~ sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following

qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production, or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation, and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company;

- (10) "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including but not limited to technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas, are unable to advance on the job, or who risk displacement because their skill deficiencies inhibit their training potential for new technology; and
- (11) "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, as provided in KRS 154.12-2086(1).

Section 211. KRS 154.12-214 is amended to read as follows:

As used in KRS 154.12-215 to 154.12-220, unless the context otherwise requires:

- (1) "Council" means the Small Business Advisory Council as established in KRS 154.12-218;
- (2) "Small business" means a business entity organized for profit, including but not limited to any ~~individual~~ partnership, ~~registered limited liability partnership,~~ corporation, limited liability company, joint venture, association or cooperative, which entity:
  - (a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and
  - (b) Has twenty (20) or fewer full-time employees or no more than the equivalent of one million dollars (\$1,000,000) in annual gross revenues in the preceding fiscal year;
- (3) "Clearinghouse" means the business information clearinghouse program of the Department for Existing Business Development;
- (4) "Manager" means the administrator of the clearinghouse program;
- (5) "Master application" means the document designed by the clearinghouse for public use in supplying all information necessary for individual state agency approval for licenses the Commonwealth requires for any person subject to the provisions of KRS 154.12-215 to 154.12-220;
- (6) "Master license" means the document designed for public display issued by the clearinghouse which authorizes individual state agency approval for licenses the state requires for any person subject to the provisions of KRS 154.12-215 to 154.12-220;
- (7) "License" means any agency permit, license, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any business activity;
- (8) "Issuing agency" means any organizational unit of state government legally authorized to issue, suspend, continue in effect, revoke or enforce any license;
- (9) "Grocery store" means any retail business that derives fifty percent (50%) or more of its gross receipts from the sale of food products, beverages and common household goods except those businesses selling exclusively fully prepared foodstuffs;
- (10) "Business" means any operation required to have a sales and use tax permit pursuant to KRS Chapter 139; and
- (11) "Work team" means a group of individuals assembled to study and make recommendations on the administration of a license and shall include representation from the issuing agency, the regulated industry, and representatives that have experience in the administration of licenses, but no vested interest in the particular license that is being considered.

Section 212. KRS 154.12-325 is amended to read as follows:

As used in KRS 154.12-325 and 154.12-330:

- (1) "Affiliate" has the same meaning as provided in KRS 154.22-010(2);
- (2) "Full-time employee" means a person employed for a minimum of thirty-five (35) hours per week and subject to the tax imposed by KRS 141.020;
- (3) "Service or technology" has the same meaning as provided in KRS 154.24-010(19) and shall include regional or headquarters operations of an entity engaged in the defined activities, but shall not include work involving direct service to the public pursuant to a license issued by the state or an association that issues licenses in lieu of the state; and
- (4) "Small business" means any business entity organized for profit, including a sole proprietorship, ~~individual partnership,~~ **limited partnership,** ~~registered limited liability partnership,~~ corporation, limited liability company, joint venture, association, or cooperative, that has fifty (50) or fewer full-time employees at the time it applies for a loan under KRS 154.12-330 and is not an affiliate or subsidiary of a larger corporate structure, unless the total number of employees of all the affiliates and subsidiaries within that structure is fifty (50) or fewer.

Section 213. KRS 154.20-010 is amended to read as follows:

- (1) There is created and established within the cabinet, subject to the authority of the board, the Kentucky Economic Development Finance Authority as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with all powers, duties, and responsibilities delegated to it by the board or as otherwise provided by law, including all programs, powers, duties, rights, and obligations of the Kentucky Development Finance Authority and the Kentucky Rural Economic Development Authority.
- (2) Any interest, right, or cause of action held in whole or in part by any person, corporation, limited liability company, partnership, **limited partnership,** ~~registered limited liability partnership,~~ government agency, or other entity under any agreement, contract, lease, mortgage, guarantee, bond, note, refund bond, or other financial transaction or obligation, made, issued, or otherwise entered into by any of the authorities, programs, or funds specified in subsection (1) of this section or that may be delegated to the authority by the board, shall not be impaired or otherwise diminished.
- (3) Any interest, right, or cause of action held in whole or in part by any of the authorities, programs, or funds specified in subsection (1) of this section shall not be impaired or otherwise diminished, but shall be assumed by the authority, for and on behalf of the cabinet.
- (4) The authority shall consist of a committee of seven (7) persons, including six (6) persons appointed by the board who shall be private citizens of the Commonwealth, and the secretary of the Finance and Administration Cabinet who shall serve ex officio. Any person appointed to the committee shall have experience and expertise in business or finance.
- (5) Two (2) members initially appointed to the committee shall have a term of one (1) year each, two (2) members initially appointed to the committee shall have a term of two (2) years each, and two (2) members initially appointed to the committee shall have a term of three (3) years each, except that any person appointed to fill a vacancy shall serve only for the remainder of the unexpired term. All subsequent appointments shall be for a term of three (3) years.
- (6) Any person appointed to the committee shall be eligible for reappointment, including any member of the committee appointed prior to July 15, 1994.
- (7) The members of the committee shall elect biennially from the committee's private citizen membership the following officers: chairman, vice chairman, secretary-treasurer, and any assistant secretaries and assistant treasurers the committee deems necessary.
- (8) A majority of the members of the committee, determined by excluding any existing vacancies from the total number of members, shall constitute a quorum. A majority vote of the members present at a duly called meeting of the committee shall be required for the purposes of conducting its business and exercising its powers and for all other purposes.
- (9) The committee shall prepare bylaws and procedures applicable to the operations of the authority and submit them to the board to be promulgated as administrative regulations in accordance with KRS Chapter 13A.

- (10) Members of the committee shall be entitled to compensation for their services in an amount of one hundred dollars (\$100) for each regular meeting of the committee and shall be entitled to reimbursement for all necessary expenses in connection with the performance of their duties.

Section 214. KRS 154.20-200 is amended to read as follows:

As used in KRS 154.20-200 to 154.20-216, unless the context clearly indicates otherwise:

- (1) "Agreement" means any agreement made pursuant to KRS 154.20-210 between the authority and an approved company with respect to an economic development project in which inducements are granted.
- (2) "Approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with an economic development project under KRS 154.20-200 to 154.20-216 and that designates the eligible company as an approved company.
- (3) "Approved company" means an eligible company that initiates an economic development project in the Commonwealth whose application has been approved by the authority.
- (4) "Approved expense" means:
- (a) For an approved company that establishes a new facility or expands an existing facility:
    1. The cost of building and construction materials, upon which Kentucky sales and use tax as defined in KRS Chapter 139 is paid, purchased in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
    2. The cost of equipment purchased and used in research and development, at the economic development project, upon which Kentucky sales and use tax as defined in KRS Chapter 139 is paid.
  - (b) Approved expenses may only be incurred during the life of the project, not to exceed eighteen (18) months from the date an eligible company is designated an approved company by the authority. Provided, however, that the authority may grant a twelve (12) month extension of the project for good cause shown. Approved expenses shall not include any expenditure made before the date the company is approved by the authority.
- (5) "Authority" means the Kentucky Economic Development Finance Authority.
- (6) "Economic development project" or "project" means a new or expanded service or technology, manufacturing, or tourism attraction activity, conducted by the approved company at a specific site in the Commonwealth, including the acquisition of real property by an approved company and the construction, installation, and rehabilitation of fixtures, and facilities, necessary or desirable for improvement of real estate owned, used, or occupied by the approved company, excluding the cost of labor. The minimum investment for an economic development project located in a preference zone shall be one hundred thousand dollars (\$100,000) and for a project not located in a preference zone, five hundred thousand dollars (\$500,000).
- (7) "Eligible company" means any corporation, limited liability company, partnership, *limited partnership*, ~~registered limited liability partnership,~~ sole proprietorship, business trust, or other legal entity that is primarily engaged in manufacturing, service or technology, or operating or developing a tourism attraction. Any company whose primary purpose is retail sales shall not be an eligible company.
- (8) "Equipment used in research and development" means:
- (a) "Equipment" means assets used in the operation of a business which are subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code. The term "equipment" shall not include any tangible personal property used to maintain, restore, mend, or repair machinery or equipment, consumable operating supplies, office supplies, or maintenance supplies; and
  - (b) "Research and development" means experimental or laboratory activity that has as its ultimate goals the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products. "Research and development" does not include testing or inspection of materials or products for quality control purposes, efficiency surveys, management studies, consumer surveys, or other market research,

advertising or promotional activities, or research in connection with literary, historical or similar projects.

- (9) "Inducements" means the sales and use tax refund allowed to an approved company for approved expenses under 154.20-200 to 154.20-216.
- (10) "Life of the project" or "project life" means the eighteen (18) month period beginning on the date the company is designated as an approved company by the authority and the twelve (12) month extension if the extension is granted by the authority.
- (11) (a) "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;
- (b) "Manufacturing" does not include any activity involving the performance of work classified by the divisions, including successor divisions, of mining 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.
- (12) "Preference zone" or "zone" means the geographic area that was designated as an enterprise zone pursuant to KRS 154.45-050, and that was in existence as an enterprise zone on December 31, 2003. No enterprise zone may be expanded after March 18, 2005. Enterprise zone designations that are scheduled to expire, pursuant to 154.45-050(2), shall expire as scheduled. All preference zones shall expire on December 31, 2007.
- (13) "Sales and use tax" means those taxes paid to the Commonwealth for the purchase of goods pursuant to KRS Chapter 139.
- (14) (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.
- (15) "Tourism attraction" shall have the meaning assigned in KRS 148.851.

Section 215. KRS 154.20-254 is amended to read as follows:

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

- (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-255(5) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Amended application" means a document submitted by an investment fund manager, in a form acceptable to the authority and on behalf of an investment fund, for the purpose of increasing the aggregate amount of available tax credits;
- (4) "Applicant" means any person or entity who has not received approval from the authority as an investment fund manager, but who has submitted or will submit an application to the authority for approval as an investment fund manager;
- (5) "Authority" means the Kentucky Economic Development Finance Authority or its designee;

- (6) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (7) "Committed cash contribution" means a legally binding agreement by an investor to make a cash contribution in an amount set forth in a written agreement between an investor and an investment fund;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Credit" means a nonrefundable credit for investors against state tax liability allocated and granted by the authority pursuant to KRS 154.20-258 for qualified investments made by approved investment funds;
- (10) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, ~~registered limited liability partnership,~~ sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10) and includes savings and loan associations, savings banks, and similar institutions subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;
- (12) "Insurance company" means any insurance company subject to the taxes imposed by KRS 136.320, 136.330, or 304.3-270;
- (13) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is approved by the authority to make qualified investments pursuant to KRS 154.20-256;
- (14) "Investment fund manager" means any person or entity that has been approved by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all applicable federal and state regulations;
- (15) "Investor" means any person or entity, including financial institutions and insurance companies, that is subject to state tax liability and that makes a cash contribution or a committed cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of violating any of Kentucky's tax laws within the past ten (10) years;
- (16) "Nonprofit entity" means an investor that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1986, as amended;
- (17) "Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;
- (18) "Qualified investment" means an investment of money in a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that consideration. In consideration for the qualified investment, the investment fund shall receive an equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; and
- (19) "Small business" means any entity which at the time a qualified investment is made by an investment fund:
- (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less; or
  2. Is a knowledge-based business, as shall be prescribed by the commissioner of the Department of Innovation and Commercialization for a Knowledge Based Economy, and has a net worth of ten million dollars (\$10,000,000) or less;

- (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by an investment fund;
- (c) Has no more than one hundred (100) employees; and
- (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

Section 216. 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, **a partnership, and a limited**~~[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 **or limited 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, **limited 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 **or limited 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 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 217. 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) **"Affiliate" has the same meaning as in Section 216 of this Act;**
- (2) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;
- ~~(3)~~~~(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;
- ~~(4)~~~~(3)~~ "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
- ~~(5)~~~~(4)~~ "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- ~~(6)~~~~(5)~~ "Average hourly wage" means the 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;
- ~~(7)(6)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(8)(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; 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;
- ~~(9)(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;
- ~~(10)(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;
- ~~(11)(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;
- ~~(12)(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;
- ~~(13)(12)~~ "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
- ~~(14)(13)~~ "Local government" means a city, county, or urban-county government;

- (15)~~(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;
- (16)~~(15)~~ "Person" means an individual, sole proprietorship, partnership, *limited 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)~~(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;
- (18)~~(17)~~ "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;
- (19)~~(18)~~ "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;
- (20)~~(19)~~ "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
- (21)~~(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 but not limited to property taxes, heating and air conditioning, electricity, water, sewer, and insurance;
- (22)~~(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;
- (23)~~(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;

- ~~(24)~~~~(23)~~ "Start-up costs" means the acquisition cost associated with the project and related to 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, as verified and approved by the authority in accordance with KRS 154.23-040; *and*
- ~~(25)~~~~(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 218. 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"* ~~has the same meaning as in Section 216 of this Act~~ ~~[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 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;
- (10) "Eligible company" means any corporation, limited liability company, partnership, *limited 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, *limited 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) "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) "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; and
- (20) "Start-up costs" means the acquisition cost associated with the project related to the furnishing and equipping the building for ordinary business functions, including computers, furnishings, office equipment, the relocation of out-of-state equipment, and nonrecurring costs of fixed telecommunication equipment as verified and approved by the authority in accordance with KRS 154.24-130.

Section 219. KRS 154.26-010 is amended to read as follows:

As used in this subchapter, 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)2., 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, *limited 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 220. 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" *has the same meaning as in Section 216 of this Act* ~~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~~

- ~~(e) 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 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, *limited 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 221. KRS 154.34-010 is amended to read as follows:

As used in KRS 154.34-010 to 154.34-100, unless the context clearly indicates otherwise:

- (1) "Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to KRS 154.34-070;
- (2) "Approved costs" means that portion of the eligible costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.34-010 to 154.34-100; however, approved costs shall not exceed ten percent (10%) of the eligible costs;
- (3) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Eligible company" means any corporation, limited liability company, partnership, *limited partnership*, ~~registered limited liability partnership,~~ sole proprietorship, business trust, or any other entity designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code of 336211, 336111, 336112, or 336120 that employs a minimum of one thousand (1,000) full-time persons engaged in manufacturing at the same facility or at multiple facilities located within the same county, whether owned or leased, is 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 a reinvestment

project which meets the standards set forth in KRS 154.34-070, and has not been an approved company in an industrial revitalization project under Subchapter 26 of KRS Chapter 154 for a period of at least five (5) years;

- (6) "Eligible 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 existing manufacturing reinvestment 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 a reinvestment 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 a reinvestment project;
  - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an existing manufacturing reinvestment project; and
  - (e) All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company;
- (7) "Equipment" means manufacturing machinery installed by the approved company at the project; however, equipment shall not mean accessories or appurtenances of existing or new manufacturing machinery including but not limited to molds, dies, or other attachments of a less permanent nature;
- (8) "Final approval" means the action taken after July 1, 2004, by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of a reinvestment agreement between the authority and the approved company;
- (9) "Inducements" means the Kentucky tax credits as authorized by KRS 154.34-010 to 154.34-100;
- (10) "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;
- (11) "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval;
- (12) "Reinvestment agreement" or "agreement" means the agreement entered into pursuant to KRS 154.34-080 on behalf of the authority and an approved company with respect to a reinvestment project;
- (13) "Reinvestment project" or "project" means the acquisition, construction, and installation of new equipment and, with respect thereto, the construction, rehabilitation, and installation of improvements to facilities necessary to house the acquisition, construction, and installation of new equipment, including surveys; installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; and shall contain eligible costs of not less than one hundred million dollars (\$100,000,000), all of which are utilized to improve the economic and operational situation of an approved company to allow the approved company to reinvest in its operations and retain or create jobs within the Commonwealth; and
- (14) "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 222. KRS 154.48-010 is amended to read as follows:

As used in KRS 154.48-010 to 154.48-035, unless the context clearly indicates otherwise:

- (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, **or a limited 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 **or limited 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 **or limited 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 *or limited 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) "Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to KRS 154.48-025;
- (4) "Approved costs" means one hundred percent (100%) of the eligible skills upgrade training costs and up to twenty-five percent (25%) of the eligible equipment costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.48-010 to 154.48-035;
- (5) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training Services in the Department for Workforce Investment within the Education Cabinet 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;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Eligible company" means any entity that undertakes an environmental stewardship project;
- (9) "Eligible costs" means eligible equipment costs plus eligible skills upgrade training costs expended after preliminary approval of the environmental stewardship project;
- (10) "Eligible equipment 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 an environmental stewardship 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, and installation of an environmental stewardship 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, and installation of an environmental stewardship project;
  - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of an environmental stewardship project;
  - (e) All costs paid for by the approved company that are required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities necessary for implementation of an environmental stewardship project; and

- (f) All other costs of a nature comparable to those described in this subsection.
- (11) "Eligible skills upgrade training costs" means:
- (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (b) Administrative fees charged by educational institutions in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (e) Employee wages to be paid in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (f) Travel expenses paid by the approved company as incurred by its full-time employees resulting directly from the costs of transportation, lodging and meals that are directly related to an occupational training program necessary for the implementation of an environmental stewardship project; and
  - (g) All other costs of a nature comparable to those described in this subsection;
- (12) "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;
- (13) "Environmental stewardship product" means any new manufactured product or substantially improved existing manufactured product that has a lesser or reduced adverse effect on human health and the environment or provides for improvement to human health and the environment when compared with existing products or competing products that serve the same purpose. Such products may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics disposed or consumed, but shall not include products that are the result of the production of energy or energy producing fuels;
- (14) "Environmental stewardship project" or "project" means:
- (a) The acquisition, construction, and installation of new equipment and, with respect thereto:
    - 1. The construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys;
    - 2. Installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities;
    - 3. Off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located;All of which are utilized by an approved company or its affiliate to manufacture an environmental stewardship product as reviewed and recommended to the authority by the Environmental and Public Protection Cabinet; and
  - (b) The provision of an occupational training program to provide the employees of an approved company or its affiliate with the knowledge and skills necessary to manufacture the new product;

- (15) "Final approval" means the action taken by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of an environmental stewardship agreement between the authority and the approved company;
- (16) "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;
- (17) "Inducement" means the Kentucky tax credit as authorized by KRS 154.48-010 to 154.48-035;
- (18) "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;
- (19) "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval.

Section 223. KRS 164.6011 is amended to read as follows:

As used in KRS 164.6011 to 164.6041, unless the context indicates otherwise:

- (1) "Applied research" means those research activities occurring at universities and in private enterprises that have potential commercial application;
- (2) "Cluster" means a geographically bound concentration of similar, related, or complementary businesses with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services, and that are faced with common opportunities and threats;
- (3) "Commission" means the Kentucky Innovation Commission;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Council" means the Council on Postsecondary Education;
- (6) "Eligible company" means any corporation, limited liability company, partnership, *limited partnership*, ~~registered limited liability partnership,~~ sole proprietorship, business trust, person, group, or other entity engaged in nonretail commerce, agribusiness, trade, or manufacturing;
- (7) "Immediate family members" means:
  - (a) Spouse and parents-in-law;
  - (b) Parents and grandparents;
  - (c) Children and their spouses; and
  - (d) Siblings and their spouses;
- (8) "Kentucky-based company" means a business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky;
- (9) "Knowledge-based" means driven by knowledge, innovation, and speed;
- (10) "Medium-size company" means a business with fifty-one (51) to one hundred fifty (150) employees;
- (11) "Qualified company" means an eligible company that may be granted a funding voucher or award pending certification;
- (12) "Science and technology organization" means an independent, nonprofit or quasi-governmental organization, with a statewide mission, that has a demonstrated history of managing complicated programs in the areas of entrepreneurial innovation, science, and technology advancement;
- (13) "Seed funding" means financing that is provided for early-stage development, refinement, and commercialization of a product, process, or innovation through continuing applied research, advancing the patent process, determining commercial and market potential, or moving research toward development of a prototype; and
- (14) "Small company" means a firm with fifty (50) or fewer employees.

Section 224. KRS 171.396 is amended to read as follows:

As used in this section and KRS 171.397:

- (1) "Certified historic structure" means a structure that is located within the Commonwealth of Kentucky and is:
  - (a) Listed individually on the National Register of Historic Places; or
  - (b) Located in a historic district listed on the National Register of Historic Places and is certified by the council as contributing to the historic significance of the district;
- (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified historic structure that the council certifies meets the United States Secretary of the Interior's Standards for Rehabilitation;
- (3) "Certified rehabilitation credit cap" means three million dollars (\$3,000,000);
- (4) "Council" means the Kentucky Heritage Council;
- (5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under this section, would have made the rehabilitation ineligible for certification;
- (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;
- (7) "Local government" means a city, county, urban-county, charter county, or consolidated local government;
- (8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his principal residence;
- (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified substantial rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;
- (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:
  - (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential property; or
  - (b) For all other property, the greater of:
    1. The adjusted basis of the structure; or
    2. Twenty thousand dollars (\$20,000);
- (11) "Taxpayer" means any individual, 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; and
- (12) "Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:
  - (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first purchaser of the structure after the date of completion of the substantial rehabilitation;
  - (b) The structure or a portion thereof will be the principal residence of the taxpayer; and
  - (c) No credit was allowed to the seller under this section.

A qualified purchased historic home shall be deemed owner-occupied residential property for purposes of this section.

Section 225. KRS 186A.190 is amended to read as follows:

- (1) Except as provided in subsection (4) of this section, the perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and shall remain effective from the date on which the security interest is noted on the certificate of title for a period of seven (7) years, or, in the case of a manufactured home, for a period of thirty (30) years, or until discharged under this chapter and KRS Chapter 186. The filing of a continuation statement within the six (6) months preceding the expiration of the initial period of a notation's effectiveness extends the expiration date for seven (7) additional years.
- (2) Except as provided in subsection (4) of this section, the notation of security interests relating to property required to be titled in Kentucky through the county clerk shall be done in the office of the county clerk of the county in which the debtor resides. If the debtor is other than a natural person, the following provisions govern the determination of the county of the debtor's residence:
  - (a) A partnership shall be deemed a resident of the county in which its principal place of business in this state is located. If the debtor does not have a place of business in this state, then the debtor shall be deemed a nonresident for purposes of filing in this state;
  - (b) A limited partnership organized under KRS Chapter 362 *or as defined in subsection (14) of Section 81 of this Act* shall be deemed a resident of the county in which its *principal place of business*~~office~~ is located, as set forth in its certificate of limited partnership or most recent amendment thereto filed pursuant to KRS Chapter 362 *or Section 106 of this Act*. If such office is not located in this state, the debtor shall be deemed a nonresident for purposes of filing in this state;
  - (c) A limited partnership not organized under the laws of this state and authorized to do business in this state ~~under KRS Chapter 362~~ shall be deemed a resident of the county in which the office of its process agent is located, as set forth in the designation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (d) A corporation organized under KRS Chapter 271B, 273, or 274 or a limited liability company organized under KRS Chapter 275 shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent corporate filing with the Secretary of State which officially designates its current registered office;
  - (e) A corporation not organized under the laws of this state, but authorized to transact or do business in this state under KRS Chapter 271B, 273, or 274, or a limited liability company not organized under the laws of this state, but authorized to transact business in this state under KRS Chapter 275, shall be deemed a resident of the county in which its registered office is located, as set forth in its most recent filing with the Secretary of State which officially designates its current registered office;
  - (f) A cooperative corporation or association organized under KRS Chapter 272 shall be deemed a resident of the county in which its principal business is transacted, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (g) A cooperative corporation organized under KRS Chapter 279 shall be deemed a resident of the county in which its principal office is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky;
  - (h) A business trust organized under KRS Chapter 386 shall be deemed a resident of the county in which its principal place of business is located, as evidenced by the recordation of its declaration of trust in that county pursuant to KRS Chapter 386;
  - (i) A credit union organized under KRS Chapter 290 shall be deemed a resident of the county in which its principal place of business is located, as set forth in its articles of incorporation or most recent amendment thereto filed with the Secretary of State of the Commonwealth of Kentucky; and
  - (j) Any other organization (defined in KRS 355.1-201) shall be deemed a resident of the county in which its principal place of business in this state is located, except that any *limited liability company, limited liability partnership*, limited partnership, or corporation not organized under the laws of this state and not authorized to transact or do business in this state shall be deemed a nonresident for purposes of filing in this state. If the organization does not have a place of business in this state, then it shall be deemed a nonresident for purposes of filing in this state.

If the debtor does not reside in the Commonwealth, the notation of the security interest shall be done in the office of the county clerk in which the property is principally situated or operated. Notwithstanding the existence of any filed financing statement under the provisions of KRS Chapter 355 relating to any property registered or titled in Kentucky, the sole means of perfecting and discharging a security interest in property for which a certificate of title is required by this chapter is by notation on the property's certificate of title under the provisions of this chapter or in accordance with the provisions of KRS 186.045(3). In other respects the security interest is governed by the provisions of KRS Chapter 355.

- (3) Except as provided in subsection (4) of this section, before ownership of property subject to a lien evidenced by notation on the certificate of title may be transferred, the transferor shall obtain the release of the prior liens in his name against the property being transferred. Once a security interest has been noted on the owner's title, a subsequent title shall not be issued by any county clerk free of the notation unless the owner's title is presented to the clerk and it has been noted thereon that the security interest has been discharged. If this requirement is met, information relating to any security interest shown on the title as having been discharged may be omitted from the title to be issued by the clerk. If information relating to the discharge of a security interest is presented to a clerk under the provisions of KRS 186.045(3), the clerk shall discharge the security interest and remove the lien information from AVIS.
- (4) Notwithstanding subsections (1), (2), and (3) of this section, a county clerk shall, following inspection of the vehicle by the sheriff, to determine that the vehicle has not been stolen, issue a new title to a vehicle, clear of all prior liens, to a person after he provides to the county clerk an affidavit devised by the Transportation Cabinet and completed by the person. In the affidavit, the person shall attest that:
  - (a) He possesses the vehicle;
  - (b) A debt on the vehicle was owed him for more than thirty (30) days before he provided the notices required by paragraphs (c) and (d) of this subsection;
  - (c) More than fourteen (14) days before presenting the affidavit to the county clerk, the person attempted to notify the owner of the vehicle and all known lienholders, including those noted on the title, by certified mail, return receipt requested, of his name, address, and telephone number as well as his intention to obtain a new title, clear of all prior liens, unless the owner or a lienholder objected in writing;
  - (d) More than fourteen (14) days before presenting the affidavit to the county clerk, the person had published a legal notice stating his intention to obtain title to the vehicle. The legal notice appeared at least twice in a seven (7) day period in a newspaper published, and with a statewide circulation, in Kentucky. The legal notice stated:
    1. The person's name, address, and telephone number;
    2. The owner's name;
    3. The names of all known lienholders, including those noted on the title;
    4. The vehicle's make, model, and year; and
    5. The person's intention to obtain title to the vehicle unless the owner or a lienholder objects in writing within fourteen (14) days after the last publication of the legal notice; and
  - (e) Neither the owner nor a lienholder has objected in writing to the person's right to obtain title to the vehicle.
- (5) No more than two (2) active security interests may be noted upon a certificate of title.
- (6) In noting a security interest upon a certificate of title, the county clerk shall ensure that the certificate of title bears the lienholder's name, mailing address and zip code, the date the lien was noted, the notation number, and the county in which the security interest was noted. The clerk shall obtain the information required by this subsection for notation upon the certificate of title from the title lien statement described in KRS 186A.195 to be provided to the county clerk by the secured party.
- (7) For all the costs incurred in the notation and discharge of a security interest on the certificate of title, the county clerk shall receive the fee prescribed by KRS 64.012. The fee prescribed by this subsection shall be paid at the time of submittal of the title lien statement described in KRS 186A.195.

- (8) A copy of the application, certified by the county clerk, indicating the lien will be noted on the certificate of title shall be forwarded to the lienholder.

Section 226. KRS 271B.4-010 is amended to read as follows:

- (1) A corporate name:
- (a) Shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and
  - (b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by KRS 271B.3-010 and its articles of incorporation.
- (2) Except as authorized by subsections (3) and (4) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:
- (a) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (b) A corporate name reserved or registered under KRS 271B.4-020 or 271B.4-030;
  - (c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;
  - (d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
  - (e) A name filed with the Secretary of State under *Subchapter 1 of KRS Chapter 362, Subchapter 2 of KRS Chapter 362, or KRS Chapter 362 or* 365.
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
- (a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
  - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:
- (a) Has merged with the other corporation;
  - (b) Has been formed by reorganization of the other corporation; or
  - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
- (5) This chapter does not control the use of fictitious names.
- (6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.

Section 227. KRS 271B.15-060 is amended to read as follows:

- (1) If the corporate name of a foreign corporation does not satisfy the requirements of KRS 271B.4-010, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:
- (a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or
  - (b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

- (2) Except as authorized by subsections (3) and (4) of this section, the corporate name (including a fictitious name) of a foreign corporation shall be distinguishable upon the records of the Secretary of State from:
- (a) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (b) A corporate name reserved or registered under KRS 271B.4-020 or 271B.4-030;
  - (c) The fictitious name of another foreign corporation authorized to transact business in this state;
  - (d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; or
  - (e) A name filed with the Secretary of State under *Subchapter 1 of KRS Chapter 362, Subchapter 2 of KRS Chapter 362, or KRS Chapter ~~362 or~~ 365*.
- (3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
- (a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
  - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:
- (a) Has merged with the other corporation;
  - (b) Has been formed by reorganization of the other corporation; or
  - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
- (5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of KRS 271B.4-010, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of KRS 271B.4-010 and obtains an amended certificate of authority under KRS 271B.15-040.

Section 228. KRS 273.177 is amended to read as follows:

- (1) The corporate name shall include the word "corporation" or "incorporated" or the abbreviation "Inc.," or the word "company" or the abbreviation "Co."; but if the word "company" or the abbreviation "Co." is used, it may not be immediately preceded by the word "and" or the abbreviation "&." The provisions of this subsection shall not affect the right of any corporation existing on June 13, 1968, to continue the use of its name.
- (2) Except as authorized by subsection (3) of this section, a corporate name shall be distinguishable upon the records of the Secretary of State from:
- (a) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (b) A corporate name reserved or registered under KRS 271B.1-300;
  - (c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;
  - (d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
  - (e) A name filed with the Secretary of State under *Subchapter 1 of KRS Chapter 362, Subchapter 2 of KRS Chapter 362, or KRS Chapter ~~362 or~~ 365*.

- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
  - (a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
  - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) The corporate name shall not contain any word or phrase which indicates or implies that it is organized for any purpose not permitted under KRS 273.161 to 273.390.
- (5) This chapter shall not control the use of fictitious names.
- (6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (7) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence; but the courts of this state having equity jurisdiction may, upon the application of the state or of any person interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although a certificate of incorporation may have been issued.

Section 229. KRS 273.364 is amended to read as follows:

- (1) If the corporate name of a foreign corporation does not satisfy the requirements of KRS 273.177, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state:
  - (a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," to its corporate name for use in this state; or
  - (b) May use a fictitious name to transact business in this state, if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- (2) Except as authorized by subsection (3) of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable upon the records of the Secretary of State from:
  - (a) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (b) A corporate name reserved or registered under KRS 273.178 and 273.179;
  - (c) The fictitious name of another foreign corporation authorized to transact business in this state;
  - (d) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state; or
  - (e) A name filed with the Secretary of State under *Subchapter 1 of KRS Chapter 362, Subchapter 2 of KRS Chapter 362, or KRS Chapter ~~362-01~~ 365.*
- (3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
  - (a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
  - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of KRS 273.177, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of KRS 273.177 and obtains an amended certificate of authority under KRS 273.3611.

Section 230. KRS 274.005 is amended to read as follows:

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

- (1) ~~"Professional service corporation" means a corporation organized under this chapter.~~
- ~~(2)~~ "Foreign professional service corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this state;~~;~~
- ~~(2)~~~~(3)~~ "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, prior to the passage of this chapter and by reason of law or a professional code of ethics, could not be performed by a corporation. The personal services which come within the provisions of this chapter are the personal services rendered by, but not limited to, certified public accountants, public accountants, chiropractors, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, optometrists and attorneys-at-law;~~;~~
- ~~(3)~~~~(4)~~ **"Professional service corporation" means a corporation organized under this chapter;**
- (4) "Qualified person" means a natural person, general partnership, limited liability company, ~~registered~~ limited liability partnership, or professional service corporation which is eligible under this chapter to own shares issued by a professional service corporation; **and**~~;~~
- (5) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional service corporation is organized to render.

Section 231. KRS 274.017 is amended to read as follows:

- (1) A professional service corporation may issue and a shareholder thereof may transfer or pledge shares, fractional shares, and rights or options to purchase shares only to:
  - (a) Natural persons who are authorized by law in this state or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;
  - (b) **Partnerships**~~General partnerships, including registered limited liability partnerships,~~ in which all the partners are qualified persons with respect to such professional corporation and in which at least one (1) partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation;
  - (c) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of organization of the limited liability company; and
  - (d) Professional service corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.
- (2) Any issuance or transfer of shares in violation of this section shall be void; however, nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

Section 232. KRS 275.015 is amended to read as follows:

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

- (1) "Articles of organization" means the articles filed in conformity with the provisions of KRS 275.020 and 275.025, and those articles as amended or restated;~~;~~
- (2) "Business entity" means domestic and foreign limited liability companies, general and limited partnerships, ~~including registered limited liability partnerships,~~ corporations, business trusts, and sole proprietorships;~~;~~
- (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;~~;~~
- (4) "Court" means every court having jurisdiction in the case;~~;~~
- (5) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280;~~;~~
- (6) "Foreign limited liability company" means an organization that is:

- (a) An unincorporated association;
  - (b) Organized under laws of a state other than the laws of this Commonwealth, or under the laws of any foreign country; and
  - (c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity;{ }
- (7) "Knowledge" means actual knowledge of a fact;{ }
- (8) "Limited liability company" or "domestic limited liability company" means a limited liability company formed under this chapter having one (1) or more members;{ }
- (9) "Limited liability company interest" or "interest in the limited liability company" means the interest that may be issued in accordance with KRS 275.195;{ }
- (10) "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country;{ }
- (11) "Majority-in-interest of the members" means those members entitled to cast a majority of the votes to be cast by the members on any matter under the terms of the operating agreement described in KRS 275.175(3);{ }
- (12) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with KRS 275.165;{ }
- (13) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in KRS 275.275 and who have not ceased to be members as provided in KRS 275.280;{ }
- (14) "Operating agreement" means any agreement, written or oral, among all of the members, as to the conduct of the business and affairs of a limited liability company. If a written operating agreement contains a provision to the effect that any amendment to the operating agreement of the limited liability company shall be in writing and adopted in accordance with the provisions of the operating agreement, the provision shall be enforceable in accordance with its terms, and any agreement as to the conduct of the business and affairs of the limited liability company which is not in writing and adopted in accordance with the provisions of the operating agreement shall not be considered part of the operating agreement and shall be void and unenforceable. If a limited liability company has only one (1) member, an operating agreement shall be deemed to include:
- (a) A writing executed by the member that relates to the affairs of the limited liability company and the conduct of its business regardless of whether the writing constitutes an agreement; or
  - (b) If the limited liability company is managed by a manager, any other agreement between the member and the limited liability company as it relates to the limited liability company and the conduct of its business, regardless of whether the agreement is in writing;{ }
- (15) "Person" means an individual, a ~~general~~ partnership, ~~a limited liability partnership, including a registered limited liability partnership, a limited partnership,~~ a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity;{ }
- (16) "Principal office" means the office, in or out of the Commonwealth, so designated in writing with the Secretary of State where the principal executive offices of a domestic or foreign limited liability company are located;{ }
- ~~(17) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.~~
- ~~(18)~~ "Proceeding" means civil suit and criminal, administrative, and investigative action;{ }
- ~~(18)~~~~(19)~~ "Professional limited liability company" means a limited liability company organized under this chapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this chapter, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies;{ }

- ~~(19)~~~~(20)~~ "Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;~~;~~
- ~~(20)~~~~(21)~~ "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide; *and*
- (21) "*State*" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Section 233. KRS 292.310 is amended to read as follows:

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

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.
- (a) "Agent" does not include an individual who represents:
1. An issuer in:
    - a. Effecting a transaction in a security exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);
    - b. Effecting transactions exempted by KRS 292.410 unless otherwise required;
    - c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;
    - d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
    - e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or
  2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
- (b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
- (a) An agent, issuer, bank, savings institution, or trust company;
  - (b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or
  - (c) A person who has no place of business in this state:
    1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940,

- pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
  - (4) "Executive director" means the executive director of the Office of Financial Institutions or any individual employee of the Office of Financial Institutions expressly designated by order of the executive director to act in the executive director's place;
  - (5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
  - (6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;
  - (7) "Office" means the Office of Financial Institutions of the Commonwealth of Kentucky;
  - (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
  - (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
  - (10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
    - (a) A bank, savings institution, or trust company;
    - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
    - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
    - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
    - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
    - (f) A person who has no place of business in this state if:
      1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
      2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;
    - (g) An investment adviser representative or a person excluded from the definition of investment adviser representative;
    - (h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940;
    - (i) A covered adviser; or
    - (j) Such other persons not within the intent of this subsection as the executive director may by rule or order designate;
  - (11) "Investment adviser representative" means:

- (a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
1. Makes any recommendations or otherwise renders advice regarding securities;
  2. Manages accounts or portfolios of clients;
  3. Determines which recommendation or advice regarding securities should be given;
  4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
  5. Supervises employees who perform any of the functions described in this paragraph; and
- (b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisors Act of 1940.
- (12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;
- (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (14) "Person" means an individual, a limited liability company, a corporation, a partnership, ~~[- a registered limited liability partnership,]~~ a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;

- (19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (20) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:
- (a) Any transaction between a viator and a viatical settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
  - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
  - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
  - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (21) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 234. KRS 313.310 is amended to read as follows:

- (1) No person shall practice dental hygiene nor hold himself out as a dental hygienist without a license issued by the board.
- (2) A licensed dental hygienist shall practice under the supervision, order, control, and full responsibility of a dentist licensed under this chapter and may practice in a dental office, public or private school, health care facility, or government institution with a dentist on staff except as provided in administrative regulations promulgated pursuant to subsections (3), (4), and (5) of this section.
- (3) A dental hygienist may provide, for not more than fifteen (15) consecutive full business days, dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if all the following requirements are met:
- (a) The dental hygienist shall have at least two (2) years with a minimum of three thousand (3,000) hours of experience in the practice of dental hygiene;
  - (b) The dental hygienist shall have successfully completed a course approved by the board in the identification and prevention of potential medical emergencies with recertification in this course every two (2) years;
  - (c) The dental hygienist shall comply with written protocols for emergencies the supervising dentist establishes;
  - (d) The board shall promulgate administrative regulations to determine procedures the dental hygienist shall not be allowed to perform while the supervising dentist is absent from the work site; and
  - (e) The dental hygienist shall not examine or provide dental health services to a patient who has not been examined by the supervising dentist within the previous seven (7) months. The supervising dentist shall have completed and evaluated a medical and dental history of the patient and shall have placed a written order for treatment in the patient's file. The board shall promulgate administrative regulations to determine guidelines for the written order.
- (4) (a) The license for each dental hygienist shall be continuously displayed in a conspicuous place in the office where the licensee practices.
- (b) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills.
- (c) The supervising dentist shall establish a written office protocol clearly defining all guidelines, including one addressing medically compromised patients, when the treatment by the hygienist is permitted and when the patient needs to be seen exclusively by the dentist. The minimum requirements of the written protocol shall be promulgated in administrative regulations established by the board.

- (d) A patient shall be notified three (3) business days in advance of an appointment for dental hygiene services when the supervising dentist will be absent from the location. The patient shall be required to sign an informed consent form, prior to treatment by the hygienist, acknowledging the dentist's absence.
- (5) The dental hygienist may provide dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if the services are provided as part of a dental health program that is approved by the board and meets all of the following requirements:
  - (a) The program is operated through a school district board of education or the governing board of an educational service center; the board of health of a city or general health district or the authority having the duties of a board of health under KRS 212.245; a national, state, district, or local dental association; or any other public or private entity recognized by the board;
  - (b) The supervising dentist is employed by or is a volunteer for the entity through which the program is operated and through which the patients are referred; and
  - (c) The services are performed after examination and diagnosis by the dentist and in accordance with the dentist's written treatment plan.
- (6) A dental hygienist may be employed by the supervising dentist or under contract with a dentist licensed under this chapter who is one (1) of the following:
  - (a) The employer of the supervising dentist;
  - (b) A shareholder in a professional association formed under KRS 274.015 of which the supervising dentist is a shareholder;
  - (c) A member or manager of a limited liability company formed under KRS 275.005 of which the supervising dentist is a member or manager;
  - (d) A shareholder in a corporation formed under KRS Chapter 271B of which the supervising dentist is a shareholder;
  - (e) A partner or employee of a partnership ~~or a registered limited liability partnership formed under KRS 362.555~~ of which the supervising dentist is a partner or employee; or
  - (f) A government entity that employs the dental hygienist to provide dental hygiene services in a public school in connection with other programs the government entity administers.
- (7) It shall be unlawful for a person or corporation to practice dental hygiene in a manner that is separate or independent from the dental practice of a supervising dentist or to establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services.
- (8) For purposes of determining whether or not a dental hygienist has met the experience requirements specified in subsection (3)(a) of this section, all experience that the dental hygienist obtained prior to July 15, 2002, shall be counted.

Section 235. KRS 342.0011 is amended to read as follows:

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.
- (2) "Occupational disease" means a disease arising out of and in the course of the employment.
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have

followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.
- (5) "Death" means death resulting from an injury or occupational disease.
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.
- (8) "Office" means the Office of Workers' Claims in the Department of Labor.
- (9) "Executive director" means the executive director of the Office of Workers' Claims.
- (10) "Board" means the Workers' Compensation Board.
- (11)
  - (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
  - (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
  - (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
    1. Total and permanent loss of sight in both eyes;
    2. Loss of both feet at or above the ankle;
    3. Loss of both hands at or above the wrist;
    4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
    5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
    6. Incurable insanity or imbecility; or
    7. Total loss of hearing.
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.
- (16) "Person" means any individual, partnership,~~[including a registered limited liability partnership,]~~ limited partnership, limited liability company, firm, association, trust, joint venture, corporation,~~[limited liability company,]~~ or legal representative thereof.
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course

of employment from persons other than the employer as evidenced by the employee's federal and state tax returns.

- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter.
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, ~~including registered limited liability partnerships,~~ limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.
- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Office of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for

deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.

- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
  - (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.
  - (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.
  - (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010.
  - (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the executive director using generally-accepted actuarial methods as follows:
    - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The executive director shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid

to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the executive director. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

- (b) The executive director shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the office and from the records of the Department for Employment Services, Cabinet for Workforce Development. The executive director shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.
  - (c) The executive director shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the office and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.
  - (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the executive director, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.
  - (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the executive director pursuant to KRS 342.340(1).
  - (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.
  - (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection.
  - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter.
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.
- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.
- (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 236. KRS 365.015 is amended to read as follows:

- (1) (a) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman. ~~{;}~~
- (b) The real name of a domestic:
1. General partnership *that is not a limited liability partnership and that has not filed a statement of partnership authority* is that name which includes the real name of each of the partners;
  2. *General partnership that is not a limited liability partnership and that has filed a statement of partnership authority is the name set forth on the statement of partnership authority;*
  3. *General partnership that is a limited liability partnership is the name stated on the statement of qualification filed pursuant to Section 69 of this Act or predecessor law;*
  4. *Limited partnership is that name stated in its certificate of limited partnership filed pursuant to Section 105 of this Act or predecessor law;*
  5. ~~{the real name of a registered limited liability partnership is the name stated in its statement of registered limited liability partnership filed under KRS Chapter 362; the real name of a domestic limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS Chapter 362; the real name of a domestic }~~Business trust is the name set forth in the declaration of trust;
  6. ~~{the real name of a domestic }~~Corporation is the name set forth in its articles of incorporation; and
  7. ~~{the real name of a domestic }~~Limited liability company is the name set forth in its articles of organization.
- (c) The real name of a foreign:
1. General partnership *is the name recognized by the laws of the jurisdiction under which it is formed as being the real name;*
  2. *Limited liability partnership is the name stated in its statement of foreign qualification filed pursuant to Section 72 of this Act or predecessor law;*
  3. *Limited partnership is the name set forth in its certificate of limited partnership or the fictitious name adopted for use in this Commonwealth under Section 165 of this Act or predecessor law;*

4. ~~[including a foreign registered limited liability partnership, or limited partnership and of a foreign ]~~Business trust is the name recognized by the laws of the *jurisdiction*~~[foreign state]~~ under which it is formed as being the real name *of the business trust*;
  5. ~~[for the fictitious name adopted for use in this state; the real name of a foreign registered limited liability partnership is the name stated in its statement of foreign registered limited liability partnership filed under KRS Chapter 362; the real name of a foreign ]~~Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this *Commonwealth*~~[state]~~ under KRS 271B.15-060; and
  6. ~~[the real name of a foreign ]~~Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this *Commonwealth*~~[state]~~ under KRS 275.410.
- (2) (a) No individual, general partnership,~~[including a registered limited liability partnership,]~~ limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this *Commonwealth*~~[state]~~ under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
    - (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, partnership, limited partnership, business trust, corporation, or limited liability company and his or its address, including street and number, if any;
    - (c) A separate certificate shall be filed for each assumed name;
    - (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
    - (e) The certificate shall be executed for an individual, by the individual; for a general partnership,~~[including a registered limited liability partnership,]~~ by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by *a trustee*~~[the trustees]~~; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
  - (3) *Each*~~[The]~~ certificate of assumed name for an individual shall be filed with the county clerk where the person *maintains his or her principal place of business*~~[is deemed a resident under the provisions of KRS 186A.190(2)(a) to (j)]~~. *Each*~~[The]~~ certificate of assumed name for a general partnership,~~[including a registered limited liability partnership,]~~ limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity *maintains its registered agent for service of process or, if no registered agent for service of process is required, then with the county clerk of the county where the entity maintains its principal office*~~[is deemed a resident under the provisions of KRS 186A.190(2)(a) to (j)]~~. If the entity *does not maintain a registered agent for service of process and does not maintain a principal office in this Commonwealth, then the certificate of assumed name shall be filed*~~[is not deemed a resident of a county in the Commonwealth, the entity shall file]~~ only with the Secretary of State.
  - (4) An assumed name shall be effective for a term of five (5) years from the date of *filing*~~[registration]~~ and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
  - (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party *formerly* transacting business *under the assumed name* and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership,~~[including a registered limited liability partnership,]~~ by at least one (1) partner authorized to *act for the partnership*~~[do so by the partners]~~, for a limited partnership by a general partner, for a business

trust by **a trustee**~~[the trustees]~~, for a corporation by any person authorized to act for the corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.

- (6) A general partnership, **except a limited liability partnership**, shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
  - (a) The assumed name and date of original filing;
  - (b) A statement setting out the changes in identity of the partners; and
  - (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- (7) ***The filing of a certificate of assumed name shall not automatically prevent the use of that name or protect that name from use by other persons.***
- (8) ***In the event of the merger or conversion of a partnership, limited partnership, business trust, corporation, or limited liability company, any certificate of assumed name filed by a party to a merger or conversion shall remain in full force and effect, as provided in subsection (4) of this section, as if originally filed by the business organization which survives the merger of conversion.***
- (9) ***A certificate of assumed name may be amended to revise the real name or the address of the person or business organization holding the certificate of assumed name.***
- (10) ***A certificate of assumed name, or its amendment or cancellation, shall be effective on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document, or at a time specified in the document as its effective time on the date it is filed. The document may specify a delayed effective time and date, and if it does so, the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.***
- (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, amendment, and renewal certificate.

Section 237. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (7) "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (8) "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (9) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (10) "Directors," when applied to corporations, includes managers or trustees;
- (11) "Domestic," when applied to corporations, ***partnerships, limited partnerships, or limited liability companies***, means all those incorporated or formed by authority of this state;
- (12) "Domestic animal" means any animal converted to domestic habitat;
- (13) "Federal" refers to the United States;

- (14) "Foreign," when applied to corporations, *partnerships, limited partnerships, or limited liability companies*, includes all those incorporated or formed by authority of any other state;
- (15) "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (16) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (17) "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (18) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (19) "Legatee" and "devisee" convey the same idea;
- (20) "May" is permissive;
- (21) "Month" means calendar month;
- (22) "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (23) "Owner" when applied to any animal, means any person having a property interest in such animal;
- (24) ***"Partnership" includes both general and limited partnerships;***
- (25) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- ~~(26)(25)~~ "Penitentiary" includes all of the state penal institutions except the houses of reform;
- ~~(27)(26)~~ "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, registered limited liability partnerships, joint stock companies, and limited liability companies;
- ~~(28)(27)~~ "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- ~~(29)(28)~~ "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- ~~(30)(29)~~ "Shall" is mandatory;
- ~~(31)(30)~~ "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- ~~(32)(31)~~ "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- ~~(33)(32)~~ "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- ~~(34)(33)~~ "United States" includes territories, outlying possessions, and the District of Columbia;
- ~~(35)(34)~~ "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;

- (36)~~(35)~~ "Violate" includes failure to comply with;
- (37)~~(36)~~ "Will" includes codicils; "last will" means last will and testament;
- (38)~~(37)~~ "Year" means calendar year;
- (39)~~(38)~~ "City" includes town;
- (40)~~(39)~~ Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
  - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
  - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in an executive, judicial, or legislative branch budget bill as provided for in KRS Chapter 48;
- (41)~~(40)~~ "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations; and
- (42)~~(41)~~ "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year.

Section 238. KRS 362.521 is amended to read as follows:

- (1) A limited partnership formed under any statute of this state prior to the adoption of KRS 362.403 to 362.525, until or unless it becomes a limited partnership under *Sections 81 to 195 of this Act*~~[KRS 362.403 to 362.525]~~, shall continue to be governed by the provisions of the statute under which it was formed.
- (2) A limited partnership formed under any statute of this state prior to the adoption of *Sections 81 to 195 of this Act*~~[KRS 362.403 to 362.525]~~ may elect to become subject to *Sections 81 to 195 of this Act*~~[KRS 362.403 to 362.525]~~ upon the filing of an amended and restated certificate of limited partnership which complies with the provisions of *Section 105 of this Act*~~[KRS 362.415]~~.
- (3) Upon the occurrence of any event which would require the filing of a certificate of amendment by a limited partnership under KRS 362.403 to 362.525 or under the statute under which the limited partnership was formed, the limited partnership shall file an amended and restated certificate of limited partnership which complies with the provisions of *Section 105 of this Act*~~[KRS 362.415]~~.
- (4) A limited partnership formed under any statute of this state prior to the adoption of KRS 362.403 to 362.525 shall not be required to change its name to include the word "Limited" or its abbreviation "Ltd." *before the time it becomes subject to Sections 81 to 195 of this Act.*

Section 239. Effective January 1, 2008, the following KRS sections are repealed:

- 362.150 Short title.
- 362.155 Definitions for KRS 362.150 to 362.360.
- 362.160 Interpretation of knowledge and notice.
- 362.165 Rules of construction.
- 362.170 Rules for other cases.
- 362.175 Partnership defined.
- 362.180 Rules for determining the existence of a partnership.
- 362.185 Partnership property.
- 362.190 Partner agent of partnership as to partnership business.

- 362.195 Conveyance of real property of the partnership.
- 362.205 Partnership charged with knowledge of or notice to partner.
- 362.210 Partnership bound by partner's wrongful act.
- 362.215 Partnership bound by partner's breach of trust.
- 362.220 Nature of partner's liability.
- 362.225 Partner by estoppel.
- 362.230 Liability of incoming partner.
- 362.235 Rules determining rights and duties of partners.
- 362.240 Partnership books.
- 362.245 Duty of partners to render information.
- 362.250 Partner accountable as a fiduciary.
- 362.255 Right to an account.
- 362.260 Continuation of partnership beyond fixed term.
- 362.265 Extent of property rights of a partner.
- 362.270 Nature of a partner's right in specific partnership property.
- 362.275 Nature of partner's interest in the partnership.
- 362.280 Assignment of partner's interest.
- 362.285 Partner's interest subject to charging order.
- 362.290 Dissolution defined.
- 362.295 Partnership not terminated by dissolution.
- 362.300 Causes of dissolution.
- 362.305 Dissolution by decree of court.
- 362.310 General effect of dissolution on authority of partner.
- 362.315 Right of partner to contribution from co-partners after dissolution.
- 362.320 Power of partner to bind partnership to third persons after dissolution.
- 362.325 Effect of dissolution on partner's existing liability.
- 362.330 Right to wind up.
- 362.335 Rights of partners to application of partnership property.
- 362.340 Rights where partnership is dissolved for fraud or misrepresentation.
- 362.345 Rules for distribution.
- 362.350 Liability of persons continuing the business in certain cases.
- 362.355 Rights of retiring or estate of deceased partner when the business is continued.
- 362.360 Accrual of actions.
- 362.401 Definitions.
- 362.403 Name of limited partnership.
- 362.405 Reservation of name.
- 362.407 Recordkeeping office -- Agent for service of process -- Requirement for agent's written acceptance of appointment.

- 362.409 Records to be kept.
- 362.411 Nature of business that may be carried on.
- 362.413 Business transactions of partners with partnership.
- 362.415 Formation -- Certificate of limited partnership.
- 362.417 Amendment to or restatement of certificate.
- 362.419 Cancellation of certificate.
- 362.421 Execution of certificates.
- 362.423 Execution of certificate by judicial act.
- 362.425 Filing in office of Secretary of State.
- 362.427 Liability for false statement in certificate.
- 362.429 Scope of notice.
- 362.431 Delivery of certificate to limited partners.
- 362.433 Admission of limited partners.
- 362.435 Voting rights of limited partners.
- 362.437 Liability of limited partners to third parties.
- 362.439 Liability of person erroneously believing to be a limited partner.
- 362.441 Limited partner's right to information.
- 362.443 Admission of additional general partners.
- 362.445 Events of withdrawal of general partner.
- 362.447 General power and liabilities of general partners.
- 362.449 Contributions by general partner.
- 362.451 Voting rights of general partners.
- 362.453 Form of contribution.
- 362.455 Liability for contribution.
- 362.457 Sharing of profits and losses.
- 362.459 Sharing of distributions.
- 362.461 Interim distributions.
- 362.463 Withdrawal of general partner.
- 362.465 Withdrawal of limited partner.
- 362.467 Distribution upon withdrawal.
- 362.469 Distribution in kind.
- 362.471 Right of distribution.
- 362.473 Limitation of distribution.
- 362.475 Liability upon return of contributions.
- 362.477 Nature of partnership interest.
- 362.479 Assignment of partnership interest.
- 362.481 Rights of judgment creditor.
- 362.483 Right of assignee to become limited partner.

- 362.485 Power of estate of deceased or incompetent partner.
- 362.487 Nonjudicial dissolution.
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